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No. ~~05-799~~  
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In The  
**Supreme Court of the United States**

Michael H. Visin  
Natalie Marselly *Petitioners*

v.

Commissioner of Internal Revenue Service  
*Respondent*

On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The 9<sup>th</sup> Circuit

**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED IN THE CASE FOR THE COURT.**

### **Introduction to the questions:**

The questions on Pages (i) and (ii), are related to two separate issues in this Income Tax Case. Issue No.1 relates to adopted by Lower Courts definite misconceptions that, IRC. Sec.280A can limit deduction of the Net Business Loss occurred on account of Ordinary and Necessary Business Expenses. Issue No.2 relates to allowance to Small businessmen deductions of certain Capital Expenditures within the year of the business, under URC. Sec.179. On both issues Petitioner disagrees with Lower Courts decisions, and in Issue No.1 Pr. also raises questions of whether certain Constitutional Guarantees and protections were denied to Petitioner during judicial proceedings in this case.

### **Questions related to issue No.1:**

1. Since Net Business Loss, occurred strictly on account of Ordinary and Necessary Business Expenses, is deductible to any business in America in the current business year, under Internal Revenue Code Sec.162, Treasury Regulations 1.162-1, and 1.280A-1,2, - can Respondent deny such deduction under Internal Revenue Code Sec.280A, even, if the last legislative Amendment of Sec.280A, enacted in year 1985, explicitly allows such deduction?

2. Can lower Federal Courts, deny to Petitioner Equal Constitutional Protection under certain active laws, governmental regulations, and Legislative Rulings (*such as listed in Question No.1*), directly related to his case, and rendering strong support to Petitioner's position, - by completely disregarding, and ignoring these laws and regulations, and declaring legal evidence precisely quoted from them - meritless, without any judicial response to them?

3. Can Lower Federal Courts, deny to Petitioner any chance for Legal Dialog with Court and Respondent, by denying To Petitioner Oral Hearing process, and at the same time not producing whether in Oral Hearing or in writing, - any fair and objective evaluation on the legal merit of these Legal Facts and Evidence, which Petitioner presented to Courts, exactly as they are present in the Laws, mentioned in Question No.1, which extend to Petitioner Constitutional protection from possible unjust actions by

Respondent; and isn't such actions of Lower Federal Courts seriously undermine, if not completely nullify, granted to Petitioner by Constitution, Equal Access to a Due Process under the Law?

**Question related to Issue No.2**

Should Lower Federal Courts, adopt a rigid approach, and deny to taxpayer, allowed by Legislature deduction of Capital Expenditures, within the year of the business, if taxpayer inserted such deduction in the Schedule "C", clearly demonstrating the choice to deduct such expenses, but wasn't aware of necessity to attach a special form for such deduction, and was not notified by IRS that, his Tax Return isn't complete, to give taxpayer a guaranteed by the Treasury chance, within the time allowed, to supply such form, or file an amended Tax return?

## **Conventions and Abbreviations adopted In This Petition**

### **Conventions:**

1. For the reason to emphasize the difference between two different categories of taxpayers, who conduct business on the part of their residence, we will use expression "businessmen-homeowners" for those businessmen, who own their homes. Otherwise, we will use expression "businessmen-renters", for those who don't.

**Abbreviations:** /Following will be used in the text of Petition/:

1. Bus. Exp. - will always stand for - **Business Expenses.**
2. BRPs. - will always stand for - **Business Rental Payments.**
3. Pr. - will always stand for - **Petitioner.**
4. R. - will always stand for - **Respondent.**
5. Hmr. - will always stand for - **Homeowner.**
6. Rr. - will always stand for - **Renter.**
7. Pr.'s - will always stand for - **Petitioner's.**
8. R.'s - will always stand for - **Respondent's.**
9. Hmr.'s - will always stand for - **Homeowner's**
10. Hmrs. - will always stand for - **Homeowners.**
- 11. Tr. Reg. - will always stand for - **Treasury Regulations.**
12. IRC. - will always stand for - **Internal revenue Code.**
13. D.U. - will always stand for - **Dwelling Unit.**
14. T.C. - will always stand for - **Tax Court.**

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**List of the Legal Authorities:**

1. Internal Revenue Code Section 280A
2. Treasury Regulations 1.280A-1, 2
3. Internal Revenue Code Section 162.
4. Treasury Regulation 1.162-1
5. Legislative Committee of the House  
Opinion on Sec.280A Amendment:  
[ House Report 99-426, pages 133 – 135  
(1985), 1986 – 3 C.B. (Vol. 2) pages 133 – 135.]
6. IRC. Sec.179
7. The Constitution of the United States  
/ Amendment V / - Due Process
8. The Constitution of the United States  
/ Amendment XIV / - Due Process,  
Equal Protection of The Law
9. The Declaration of Independence

**1. Jurisdiction:** Petitioners Residence and Business are located in San Francisco, Ca. 94121; which is within the Jurisdiction of United States Court Of Appeals For The 9<sup>th</sup> Circuit. Also This Petition is filed under 28 USC Section 1254, subpart 1.

**2. Timeliness of Appeal of Petition:**

- a). On June 18, 2003 Tax Court trial before S.T. Judge Robert Armen took place, where Petitioner submitted to Court its Trial Arguments in writing.
- b). On August 18, 2003 Tax Court filed and served Memorandum Finding Of Facts And Opinion.
- c). On October 28, 2003, Tax Court issued Order denying Petitioners' Motion for Reconsideration.
- d). On December 8, 2003, Tax Court entered Decision in the case

in favor of Respondent.

**e).** On Jan.14, 2004 Tax Court issued Order of denial of Petitioners' Motion to Vacate the Tax Court's Decision.

**f).** On March 11, 2004, Notice of Appeal in United States Court Of Appeals for the 9<sup>th</sup> Circuit was mailed by Petitioners.

**g).** On February 11, 2005, Decision of The Court of Appeals, by the three judges panel of Fernandez, Graber, and Gould, affirmed decision of the Tax Court.

**h).** On March 31, 2005, Petitioners submitted to Court of Appeals their Petition For rehearing En Banc.

**i).** On August 2, 2005, Court of Appeals for The 9<sup>th</sup> Circuit issued Order, denying Petitioners' Petition For rehearing En Banc.

**j).** On October 21, 2005, Supreme Court of the United States granted petitioners extension of time to present Petition for the Writ Of Certiorari on the November 30, 2005, including.

**3.** This Petition and Appendix were prepared in compliance with Supreme Court of the United States Rules 14, and 33.

#### **4. Special Note:**

All underscored words and expressions, and bold type, - is by Petitioner only, by necessity to emphasize, or to make stand out certain contentions, and parts of the quotations from the Tax Laws, and from Treasury Regulations and similar, which never have been paid particular attention to, - in previous similar cases

## **Issue No.1      Proper Application of Sec. 280A.**

### **Introduction**

Considering that U.S. Tax Laws have widest national application, this case by itself has wide national significance, because it dispels long standing misconception, adopted by Respondent, Tax Court, and Courts of Appeals that, IRC. Section 280A is authorized to limit deduction of Ordinary and Necessary Bus. Exp., while in reality, it was enacted only for regulating deductions of typical Hmr.'s Exp., allowed by Congress to Hmrs., who use part of their homes for business; for which abundance of proof from the relative Tax Laws is presented here. IRC. Sec.162, Tr. Reg. 1.280-1,2 and 1.162-1, intimately related to, but never in depth, or at all considered by R. and Lower Courts in similar cases, are so overpoweringly on Pr.'s side that, Pr. could be, possibly, able to prove his cause with single quote from the last Legislative Amendment of Sec.280A (*part "C", Page 12 of this Petition*), which stands in complete agreement with over mentioned laws. This quote proves that, all Ordinary and Necessary Bus. Exp., can, and have to be deducted from the gross income of the business, (with permitted Net Loss), - well in advance of all other deductions, regulated by Sec.280A; - an irrefutable evidence of limited purpose, for which Sec.280A was created and amended. But since misconception, in regard to Sec.280A legal powers, became the adopted practice in similar cases, Pr. presents to Court, methodical and completely unbiased, step by step analyzes of all relative to this case tax laws. Still, additional aspects of this Issue, indicated in the questions; are related to such Constitutional guarantees, as: Equal Access To The Due Process under the Law, Equal Protection Under The Law, and, as consequence of possible violation of these guarantees, - Business Discrimination, Discrimination from the Equal Chance in Pursuit Of Happiness, etc.

### **Basic Facts Of The Case – Issue No.1**

Pr., who runs his Fine Art Business on the bulk of the flat, rented by its size, prevailingly, as the place for business, and a smaller percentage of it, as a residence, - sustained a Net Loss in his business in years 1997 and 1998; due to serious illness, that could be well cured with immediate treatment, but misdiagnosed, and not treated for 19 days, lead to five hospitalizations through years in issue; and a lot of pain and suffering, which cut in Pr. work schedule, and slowed the process of completion of Pr.'s numerous art works, executed in multi-layered oil painting technique, demanding a lot of time for

precise modeling of details within complex and tightly packed compositions. For his art business, Pr. uses three front rooms, all separated by the doors. Pr. is using stairs and entrance hall for displaying his art works, sales of picture framing, and his ceramic pieces, and also for framing his paintings, meeting patrons, and arranging receptions. Prs. are using second largest room in the apartment, as combination living room and bedroom, which with spacious kitchen forms satisfactory studio apartment, with separate entrance. In 1998, Pr. also used his garage space for business only; for cutting moldings and producing ceramics, fired elsewhere. In his Tax Returns, for the years in issue, Pr. claimed deductions of his Ordinary and Necessary Bus. Exp., including Business Rental Payments, for the percentage of apartment used for business, on the basis of: IRC. Sec.162, entitled "Trade and Business Expenses", and Tr. Reg. 1.162-1, enacted as this section's legal extension. R. audited these tax returns and disallowed part of deductions of Pr.'s BRPs., which were the reason for the Net Loss, basing disallowance on IRC. Sec.280A. Pr. filed two Appeals with R., presenting proof from Sec.280A and Tr. Reg. 1.280A-1,2 that, Sec.280A is not authorized to rule over BRPs., such as Pr.'s, but only over, so called, Home Office Deductions, which List, located in Tr. Reg. 1.280A-1,2, includes only typical Hmrs.'s Exp., such as: Home Insurance, Home Depreciations, and similar, all related to security and maintenance of the Equity of the owned home. In response, R., on its own, initiated, so called Technical Advice Process in its National IRS Office, which lasted almost three years, and was finally abandoned by R., without any responses being produced to Pr.'s Legal Arguments, all - strictly based on the relative to the case Tax Laws and Tr. Reg. In its statement of denial, R. flatly refused to enter in detailed Legal Dialog with Pr.; and stated that, the absence of any references to Renters and their Rental Payments in Sec.280A and its Tr. Reg., does not preclude partial disallowance of BRPs., like Pr.'s on the basis of Sec.280A. Pr. filed an appeal with Tax Court, that ruled for R., and so did the Court of Appeals for The 9<sup>th</sup> Circuit. Not a single Pr.'s legal argument, precisely based on relative to the case Tax Laws, listed above; and on the text of the last Legislative Amendment of Sec.280A, - was evaluated on its legal merit, or answered by either Courts, and no any Oral Hearings were allowed to Pr., which truly makes Supreme Court of The United States - the Court of Last Resort, and not only for this Pr., but equally so - for

many other possible petitioners, all of which still can be facing financial liability, which is explicitly not authorized by Legislature.

### **Short Foreword to Petitioners' Legal Arguments on Issue No.1**

The same legal contentions, presented here, were presented to Lower Courts, such as: **a).** detailed legal analyzes of Sec.280A and Sec.162, Tr. Reg. 1.280A-1.2 and 1.162-1. In addition, Pr. also presented: **b).** Detailed legal analyzes of Opinion and Instructions from the last Legislative amendment of Sec.280A, on precise meaning and ways Sec.280A should be applied. **c).** Examination of Legal Realities of the IRC., defining ways of possible legal interaction between different sections of the Code, and limited authority over other sections by Sections 161 and 261. **d).** Continuity of power of Congressional authority in eventual formulations of individual sections, treasury regulations, and formation of legal systematic of IRC. itself. It is important to note that, arguments **b, c,** and **d,** constituted completely new and additional arguments, initially presented to the Tax Court, in direct response to the Tax Court Opinion. The same set, of all over listed arguments, was included, even in more detailed form, in Pr.'s Petition For Rehearing En Banc.

For the convenience and necessity to analyze each different aspect of this issue, Pr.'s legal contentions are presented to Court in several relative parts: "A", "B", "C", "D", "E", "F", "G", - inevitably interconnected with each other, which makes each separate part equally and uniquely important for the whole picture.

### **Part A. - Why Petitioner claimed deduction of his BRPs. under IRC. Sec.162, as the only legal authority in IRC. over Pr.'s Business Rental deductions ?**

1. Because Pr.'s BRPs. belong to Ordinary and Necessary Bus. Exp., incurred due to income producing activity, to which even Tax Court didn't object (*see farther evidence of this in Tax Court Opinion, A-1 in Appendix*). Pr. claimed deduction of his BRPs. under IRC. Sec.162, entitled "Trade and Business Expenses", on the basis of its Ruling Paragraph **(a)(3)**, which states following: (*we quote*)

"In general. - There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during taxable year in carrying on any trade or business, **including - rentals** or other payments required to be made as a condition to the **continued use or possession**, for purposes of the trade or business, of property to which taxpayer has not taken or is not taking title, or in which he has no equity."



2. Pr. Also relied on Tr. Reg. 1.162-1, entitled "Bus. Exp.", - enacted by the Treasury, as Legal Extension of Sec.162, which affirms that: "...the full amount of the allowable deduction for ordinary and necessary expenses in carrying on a business is deductible, even though such expenses exceed the gross income derived during the taxable year from such business"

3. These quotes, should have left no doubts that, Pr. has its undeniable right to deduct his BRPs. in full, during taxable year of business, under Sec.162 and its Tr. Reg.; but such conclusion deserves additional commentaries, due to the following later comparative evaluation of Sec.162 and Sec.280A. **First: Sec.162** contains, as any fully potent law must, - clear and unambiguous definition of Ordinary and Necessary Bus. Exp., along with precise definition of Bus. Rental Exp., as their legitimate part; and it presents calm and authoritative ruling of how ordinary Bus. Exp. can be deducted. **Second:** It sets up an important deductibility conditions for the Business Rental Payments, such as: necessity for continued access to the property without which business is simply impossible to conduct, as it precisely is in Petitioner's circumstances; and absence of any equity on businessman part, in the rented property. Conditions that Pr.'s Bus. Rental Deductions satisfy fully. It has to be added that, there is absolutely nothing in the whole of IRC. that contradicts this important for business - ruling of Sec.162.

4. Also, the absence of equity in the part of property, rented by Pr. exclusively for business, has additional special importance, because it reflects main principle of American taxation laws; meaning that, when taxpayer spends part of his income to buy something for personal use, such expense is prevailingly not deductible, because in exchange for it taxpayer acquires something of equal value, compensating him for expense. The business expense, is an expense toward the process of creation of any kind of product, or providing service - not for the businessman, but for the potential customer; and as such - is an expense toward the income or profit creating activity, that contains element of risk of net loss. This is why that, it is the net profit only that is taxed, but not the loss, which can happen even to a mighty corporation, with all seemingly needed means to avoid it. But this is exactly what R. is trying to do - to tax Pr.'s business loss.

5. But there is still a question in regard to Sec.162. Is there an exception from the general rule 162(a)(3)? And the answer lays in the way that IRC. code is structured. So, if there are any such

exceptions, all of them are specified in Sec.162 itself, or in many Cross-References between Sec.162 and other IRC. sections; but what is important for Pr.'s case: Sec.162 has absolutely no cross-references with Sec.280A.

6. And in the end, one more question can be asked. Does ruling of Sec.162 on deductibility of Ordinary and Necessary Bus. Exp., coming from Legislative branch of the government; and the ruling on the same in Tr. Reg. 1.162-1, coming from Executive branch's Secretary of the Treasury, to whom Respondent himself reports, represent the End Legislative Result, or the Final Will of The Congress, in regard to deduction of such expenses? In Pr.'s opinion, the answer to such question should be obvious - yes, because Tr. Reg. for the specific IRC. section is always enacted by the Treasury with explicit permission and authorization from the US. Congress, and with exhaustive knowledge of the IRC.

#### **Part B. - IRC Section 280A and its legal authority.**

1. The title of Sec.280A is: **"Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc."** And it should be fair assumption that this title sets up the scope of Sec.280A legal authority, so it makes sense to try to analyze what this title means.

2. Presuming that word "disallowance" means possible limits on deductibility of these "certain expenses"; the first we can notice, is that, this title is not using the term "business expenses", but instead speaks about "certain expenses in connection with business use of home", which possibly constitute some specific group of expenses, unknown to us so far, and entirely different from Ordinary Bus. Exp. which, as we know from Sec.162, are fully deductible.

3. After the title of Sec.280A, we encounter subsection (a) General rule: *(quote)*

"except as otherwise provided in this section, in case of a taxpayer who is an individual or an S corporation, no deductions otherwise allowable under this chapter shall be allowed with respect of the use of the dwelling unit which is used by the taxpayer during the taxable year as a residence". R. customary trying to use this subsection, as the mean to place limit of deductibility not only on so called "certain expenses", which we eventually will precisely define, but on Ordinary and Necessary Bus. Exp. also, - in total contradiction with Sec.162, Tr. Reg.1.162-1, and Tr. Reg. 1.280-1.2; and this is why, we have to point to certain paradoxes and



ambiguities that this subsection (a) contains. Sec.280A, as a law, is suppose to give us the list of expenses it is created to rule over, because these are the only expenses “allowable under this chapter” to be deducted, when part of the residence is used by taxpayer for business. But the promise of General Rule (a) - **the list of expenses or deductions**, uniquely “allowable under this chapter”, - is **totally absent** in Sec.280A; and without such List and precise order of these deductions, - **Sec.280A simply can not be used alone!** But instead of specific “certain expenses” or specific deductions, the whole of the Sec. 280A discusses variety of specific circumstances, in which part of the home can be used for business, and all of them, without exceptions, - are related to businessmen-homeowners; and as R. admitted himself, in the written statement to Pr., there are no any references in Sec.280A to businessmen-renters or their BRPs.

4. We next quote subsection 280A(b): “Exceptions for interest, taxes, casualty losses, etc. – Subsection (a) shall not apply to any deductions allowable to the taxpayer without regard to its connection with his trade or business (or with his income producing activity).” These expenses-deductions are the **only one**, specifically defined in Sec.280A, and they point to the possible fact that taxpayer in Sec.280A is – Homeowner!

5. Farther exceptions, listed in subsection 280A(c), do not define any additional, allowable under general rule 280A(a) deductible expenses; but instead define only the circumstances in which these “certain expenses” can be deducted. But what is important for us is following: **First** - The only expenses which are specifically identified in subsection 280A(b), are expenses of Hmrs. **Second** – When we look at paragraph 280A(c)(5), “Limitation on deductions”, which prevailingly is written as one sentence, and obviously for the “deductions allowable under this chapter”, we inevitably witness that the first operation, which should be done to define the possible remainder of the “excess of gross income” available for farther deductions, is deductions from it - expenses specified in subsection 280A(b), - specifically Hmrs’ Exp. This, along with fact that Sec.280A speaks only about Businessmen-Hmrs., supplies additional possible proof that Sec.280A regulates only specific Hmrs.’s deductions, as a special category.

6. The paragraph (C)(5) of Sec.280A, again, is prevailingly a long single sentence. Its language is very condense and in places confusing, especially because even here, in the most important

paragraph of this section, we still are not told what these deductions "allowable under this chapter" are. Finally, the list of such expenses-deductions, which can be limited, if there is not enough of the remainder of the "excess of the gross income", after all pre "certain expenses" deductions were processed - can be found only in Tr. Reg. 1.280A-1,2. These regulations contain both: the List of Expenses, over which Sec.280A rules, and Order of their deduction, and this List contains only expenses which are associated with Homeownership. And while these Regulations are much longer and more detailed than Sec.280A, and include numerous examples of different business arrangements, BRPs., such as Pr.'s, are not only not present in these examples, as expenses, deduction of which can be limited, but are virtually nowhere mentioned all throughout these Tr. Reg. The business situations in all given examples in these regulations, are very telling by itself. Taxpayer A. owns a vacation home, taxpayer B. owns a boat, taxpayers C. and D. have shared equity in ownership of this or that, and so own, in the same manner.

**7. The unique importance of Tr. Reg. 1.280A-1,2,** is in shedding defining light on the purpose of Sec.280A, and in showing us that, expenses this section is suppose to rule over, - are typical Hmr.'s Exp. such as Home Insurance, Home Depreciation, and similar. And because such expenses do not belong to Ordinary and Necessary Bus. Exp., necessary for the income creating activity, it becomes clear, why title of Sec.280A calls them "certain expenses in connection with business use of home".

**8.** Thanks to Tr. Reg. 1.280A-1,2, we can make a conclusion that, Sec.280A was created to control deductions allowed to Hmrs. conducting business on the part of their homes, or in case of the Rental Use of them, as deductions for the mere fact of such usage; and the expression "Business Use of Home", in context of Sec.280A, simply emphasizes this fact; and expenses for the trade or business itself, are a separate category. It is truly important, at this juncture, to emphasize that, when we are speaking about Businessmen-Rrs., like Pr., and business part of their rental expenses, and about Businessmen-Hmrs. and their "certain expenses" for the "business use of home", - we are speaking about different categories of taxpayers, and different categories of expenses. The first - are Ordinary and Necessary Bus. Exp., which both, Rr. and Hmr., can incur in their trade or business; fully deductible under Sec.162 in the current business's year to both of these categories of taxpayers. And

*the other, which only Hmr. can have; are allowed by Legislature to be allocable to business activity, and thus - to become deductible to a certain limit only, because they are typical Hmr.'s payments in the equity of the owned home.* Rr., in opposite to the Hmr., is not obliged to insure the home, in which he is a lodger, neither he has anything to do with home depreciation. It is true that, Utility is one common category that Hmr. and Rr. pay, but Rr. pays proportional business part of utilities for the need to sustain his business space work suitable; which payments belong to the part "rental and other payments", in Bus. Exp. definition of Sec.162. Hmr., on the other hand, would always be paying his full utility bills for his home. If Hmr., would use in his business some extra energy demanding machinery, and incur additional, business type expenses for that, he would be certainly entitled to deduct this additional energy cost, as an ordinary business expense.

9. When we will look now, at the text of subparagraph (ii) of paragraph 280A(c)(5), we will be able precisely decipher its somewhat confusing formulations, when we are told that, after we have deducted mortgage interest and similar from the excess of the gross income, we have to deduct from it - *(we quote)* "the deductions allocable to the trade or business in which such use occurs (but which are not allocable to such use) for such taxable year." If there is an art of none-intentional confusing the reader, than this is a perfect example, because this subparagraph (ii), *(in the absence of the definitive list of expenses-deductions, for which Sec.280A was created - in the section itself)*, - potentially can, and does create an impression in some minds, - that, it somehow limits deductions of Ordinary and Necessary Bus. Exp. also, and that thus Sec.280A possess such power, while, in fact, it hasn't any in this regard! Still:

a). The excess of gross income, which remains after all Ordinary and Necessary Bus. Exp. have been deducted, normally called - "net business income or loss", - is, what businessman taxpayer comes up with in the end of the tax year.

b). Tr. Reg. 1.280A-1,2 shows us this by example; and the possible reason, why it is does not give us example with business loss, is because in this case - all deductions for the business use of home, such as Home Insurance, Home Depreciation, etc. - the Hmr.'s deductions, are not deductible in such tax year; and these Regulations wouldn't be able to illustrate the specific, for Hmr.'s Exp., - order of their deductions; because, if such Hmr.'s Exp. "are

not allocable for such use" "for this business year", they must be rolled over toward the next year income under the same condition of deductibility; because such, allowed by the Congress allocability of these expenses-deductions to the trade or business, has not made them a part of Ordinary and Necessary Bus. Exp., and vice versa; and this is why their deductions are limited, which is emphasized in 280A(c )(5)(ii) by the expressions "(but which are not allocable to such use)" with following after that "for such taxable year." And mortgage interest and similar can be deducted by Hmr., as his regular itemized deductions. Tr. Reg. 1.280A-1,2 thus, is showing us how, and in which order, - deductions of "Certain Expenses", allowed to Hmr. under the Sec.280A, must be processed, because Sec.280A does not contain such information. And according this, let us suggest that, if subparagraph (ii) would be starting with expression: the deductions of "certain expenses in connection with" trade or business in which such use occurred, - this subparagraph would mean absolutely the same that it means in original text.

In regard to everything said previously, under this point **b)**., let us show by example, how R.'s Side treats subparagraph 280A(c )(5) (ii) in its attempt to prove that Sec.280A limits deductions of Ordinary and Necessary Bus. Exp. also.

On the Page - 12, of R.'s Side Brief to Court Of Appeals For The 9<sup>th</sup> Circuit, paragraph 280A(c )(5) is reduced to two subparagraphs only: (A) and (B) , and we quote:

"But even where a taxpayer comes within this exception, - (*means : exclusive usage of the part of dwelling unit as principal place for any type of business - Pr.'s insertion*) - the amount of the deduction may not exceed the excess of:

(A) the gross income derived from such use for the taxable year, over. . .

(B) . . . the deductions allocable to the trade or business in which such use occurs. . . for such taxable year."

As we can see, according to this completely reinvented paragraph (c )(5), and an apparent inclusion in the line (B), by R.'s Side, of Ordinary and Necessary Bus. Exp., - it looks, like such expenses have to be deducted from the gross income from the business twice. First, - to determine the excess of gross income, because there is no other way to define it; according 1985 Sec.280A Amendment, (which will be demonstrated in Part "C"); and second time, - to satisfy the erroneous interpretation of this paragraph that, deduction



of Ordinary and Necessary Bus. Exp. are indeed limited by Sec.280A. We have brought this example for the Court's attention, just to show once more that, R.'s Side application of Sec.280A to Ordinary and Necessary Bus. Exp. is truly paradoxical, because it contradicts the original Legislative formulation of paragraph 280A(c )(5) itself!

10. In addition to everything said over about Sec.280A, we truly doubt that, anyone in the Legal Practice would disagree that, any Law could be judged potent to rule over certain category or entity, only if, such category or entity is precisely and unambiguously presented and defined in this Law, as a Category or Entity, which falls under this Law regulations. And accordingly to this Universal Legal Standard, Pr.'s BRPs., just by the virtue of not being defined and specifically presented in Sec.280A and its Tr. Reg., as a Specific Category of Expenses over which Sec.280A rules, must be excluded from the scope of the Sec.280A ruling. And according to this, Pr. believes that we are allowed to say that, Sec.280A has Zero Legal Basis to rule over deductions of Pr.'s BRPs., and in fact, possibly over any Ordinary and Necessary Bus. Exp., because it does not contain their definition, specified as expenses that fall under Sec.280A disallowance ruling; and that these deductions - are ruled over - solely by Sec.162 and its Tr. Reg.

And this is why, Sec.280A contains only one cross-reference with Sec.162, (*which by the way demonstrates that authors of Sec.280A did consider possible legal interaction between these two sections*), but this one has nothing to do with specific Pr.'s deductions in this case, and with Ordinary and Bus. Exp., overall.

11. To the extent of previous paragraph, Pr. would also like to suggest that, judicial approach to governmental laws which have the widest national applications; and evaluation of their true authority, - can not be less strict than evaluation of, let say, Business Contracts. And treating such laws loosely, beyond stringent legal standards, can only lead to the anarchy and encourage abuse of power. And according to this, whatever is not included in the law, is simply not there; and such argument, as R.'s Side offered in its Brief to Court of Appeals (*page15, last paragraph*) that, the absence of particular references to Pr.'s BRPs. in Sec.280A, (*and in its Tr.Reg. - we must add*) does not preclude applying limitation to their deductions, should not be taken by the Courts lightly, or easily acceptable. And

to give this part additional and possibly undeniable weight, we will go now to Part C.

**Part C. - Legislative Committee Opinion in regard to Amendment of Sec.280A in the year 1985.** ( H.R. Rep. No. 99-426, at 134 35(1985), reprinted in, 1986 - 3 C.B. vol. 2 134 - 35.)

This Legislative Opinion, in this dispute, is probably the most important evidential and legal tool that clearly explains the specific purpose for which Sec.280A was created, and gives precise instructions on how it must be applied. It is what Legislature itself tells us: what we are allowed to deduct and how, and in which order. We present here the most important and decisive quotes from this Opinion; and we present them exactly as Tax Court has presented them in its Opinion, trying to use Committee's Opinion in support of Tax Court position, while in reality, it does absolutely different. Here is the first quote that we present:

**"Reasons for Change / Limitation on deduction**

...In adopting provisions of the bill, the committee reemphasizes that section 280A was enacted because of concerns about allowing deductions for items which have substantial personal component relating to home, which most taxpayers cannot deduct, and which frequently do not reflect the incurring of significantly increased cost as result of the Business activity, and that the provision should be interpreted to carry out its objectives"

The first thing, which is important here is: the differentiation that Committee makes between expenses-deductions which have in them "substantial personal component", which frequently do not significantly increase the cost of the business activity itself, and expenses for business activity, which clearly tells us that these expenses "which most taxpayers cannot deduct" are different from the Ordinary and Necessary Bus. Exp., the ones without which business simply cannot exist. We also know, and we spoke about this earlier that, Ordinary and Necessary Bus. Exp. do not have in them any "personal component", (which also can be characterized as component, related to ownership of personal item, in this case - home, and in assuring long time security of its equity); because they are just expenses necessary for income creating activity. The characterization of expenses that have in them "substantial personal component relating to home", tells us that, such expenses, while not entirely personal, because in exchange for them taxpayer does not receives something that he can touch as an object for personal use;

but that they are personal enough - to a degree, that, when taxpayer is not using his home for business, they are not deductible. There is only one category of expenses, which fits definition of having in itself such substantial personal component; and these are: Home Insurance, Home Depreciation, etc; which, as we know, only Hmrs. can have, because they are the payments for security and preservation of the Equity of the Home. And because such expenses do not directly participate in the income creating activity of business, most of the times they are small in comparisons with Business Expenses. Overall, this first quote from Legislative Committee Opinion already gives us a good guess what are these **Home Office Deductions**, for the **Use Of the Unit Itself**, - names that Committee uses in its next quote. And the next quote from the same Legislative Opinion-Amendment, which T. C. included in its Opinion, and R.'s Side quoted in its Brief, as undeniable proof that R. is right and Pr. is wrong, unfortunately, was understood erroneously by both. This particular quote, can be called, as it's fashionable now, the mother of all proofs in support of Pr.'s position, and it is this quote that was mentioned in Introduction to Issue No.1. It is presented bellow:

**“Explanation of Provision / Limitation on deduction**

***In general.*** – The bill limits the amount of a home office deductions (other than expenses that are deductible without regard to business use, such as home mortgage interest) to the Taxpayer's gross income from the activity, reduced by all other deductible expenses attributable to the activity but not allocable to the use of the unit itself. Thus, home office deductions are not allowed to the extent that they create or increase a net loss from the business activity to which they relate.”

What are the incredibly important features of this quote, that render its unquestionable support for Pr.'s Position?:

a). The first two and a half lines of this quote, evidence to us the inseparable bond in Sec.280A, between Home Office Deductions, and such expenses, as Home Mortgage Interest and similar, in the setting and meaning of Sec.280A. It tells us that, when and where home office deductions are present in situation of partial business usage of home under Sec.280A, the mortgage interest, and similar to it, are inescapably present too. The deduction of the last is not limited in any case, but deduction of the first can be, which presents to us additional confirmations that Home Office Deductions are, what we were contending all along in this petition – the deductions



that only homeowners can have, considering that, term "Home", or "Dwelling Unit", under the purpose of Sec.280A and its amendment, means property – the owned home.

b). This Quote most sharply differentiate between Home Office Deductions, as such, and deductions of Ordinary and Necessary Bus. Exp., which Committee identifies as "all other deductible expenses attributable to the activity", to which Pr.'s BRPs. most unquestionably belong; and this quote underscores that, such Business Expenses cannot be even allocated to Use Of the Unit Itself, which means that any attempt to try to allocate Ordinary and Necessary Bus. Exp. to Home Office Deductions is wrong and is against the tax law! ( Hence, they were not included in Tr. Reg. 1.280A and Sec.280A, as expenses falling under its limitation.)

c). But even before that, this Quote establishes that, deductible business expenses - "attributable to the activity" itself – must be deducted first from the Gross Income from the business, without regard to possible Home Office Deductions, to which they cannot be allocated; and no tiniest inkling exists in this quote that would tell us that deduction of the Ordinary and Necessary Bus. Exp. can be limited, if part of the home is used for business, even in regard to businessmen-homeowners!

d). But the crown jewel of this Quote is its Last Sentence with its combination of the three most instructive words, such as "create or increase", which establishes, once and for all, three important things:

**First:** If the Excess of Gross Income from the business exists, after all pre Home Office Deductions were processed, and the amount of Home Office Deductions is larger than the remainder of the excess of gross income, - Hmr. is allowed to deduct only the part of home office deductions, up to the limit of zero profit; but not to deduct farther, which would mean to Create a Net Loss! And this is what means that, Home Office Deductions are not allowed to create a Net Loss from Business. As another quote, from the same Committee Opinion says the same, in slightly different words: "The committee believes that a home office deduction to which section 280A applies should not be used to reduce taxable income from the activity to less than zero." *(The last underscored expression in this quote should not be gone by lightly, because here - Committee instructs us again that, it is Home Office Deductions that is the Sec.280A target, and not the Ordinary and Necessary Business*

*Expenses, which were already deducted to calculate the Excess of the Gross Income.)*

**Second:** If the Net Loss from Business already exists, Home Office Deductions are not allowed to increase it. Which means that Net Loss from Business, on account of Ordinary and Necessary Bus. Exp., - indeed is allowable to be deducted in business setting on the part of taxpayer's residence; as it is equally and similarly deductible in full to any legitimate business within the same business year in United States; exactly what IRC. Sec.162 and its Tr. Reg. establish. It is only the Home Office Deductions that are not allowed to be deducted in such year of the business, in case of Business Net Loss, because in such a way, these deductions will Increase the Net Loss, what they precisely are not allowed to do by Sec.280A and its amendment! And now, we know that, it is not Ordinary and Necessary Bus. Exp., but Home Office Deductions that "...are not allowed to the extent that they create or increase the net loss from the business activity to which they relate".

**Third:** And finally, after all, we can clearly see that there is no any difference in approach to deduction of Ordinary and Necessary Bus. Exp., of which Pr.'s BRPs. are a legitimate part, between Sec.162 and Legislative Committee of Congress amendment of Sec.280A. *(After all, how Net Loss from the Business can be increased by the Home Office Deductions, if it is not allowed to be deducted in the first place?!), which is a final proof that, Sec.280A and its Paragraph 280A( c )(5) follows the Legislative Committee Opinion to the letter.*

#### **Part D. - Additional Important Considerations:**

1. Many questions can be asked in regard to - why Sec.280A was written the way it was. Why it does not use term Homeowner, or Homeowners expenses? Why it does not use such terms as Home Office Deductions, Home Office Costs, or Use Of The Unite Itself, within Sec.280A, and gives their precise definitions; and why it uses instead only suggestive terms, such as "Certain Expenses" and "Expenses Allowable Under This Chapter"? Our suggestive answer is threefold. **In the first** - it was abundantly self-evident to everybody involved in the process of enactment and amendment of Sec.280A, what this section is all about. **In the second** - Legislature probably felt somewhat shy, to a degree, to advertise openly, by the different than suggestive terminology that, homeowners will get yet an additional deductions, such as Home Insurance, Home

Depreciation, and similar, which actually don't have anything to do with business per say. **And in the third** – Legislature probably relied on the two times usage of term “property” in definition of the Dwelling Unit, which we will discuss later; but before that, we have to note that, the actual way in which Sec.280A has been written, led to the situation that, many important for this section's proper usage – terms and rulings, ended to be scattered all over. Some – only in Tr. Reg. 1.280A-1,2, which makes this Regulations extremely and unavoidably important for proper application of Sec.280A; (but R., R.'s Side in its Brief to Court of Appeals, and both lower Courts completely disregarded and ignored them); and some can be found only in the text of the Sec.280A amendment; which, altogether, is the least helpful situation for the proper understanding and application of Sec.280A. And the T.C. Opinion clearly reflects this situation, with T.C. quoting text of Sec.280A Amendment, which sounds totally in contradiction, with what Court is trying to prove. ( See Part “E” of this Petition. )

2. The definition of Dwelling Unit also deserves special attention, because, as we already mentioned, it uses the word “property” twice, which makes it suggestive that it describes dwelling units owned by taxpayers. We quote this definition below:

“In general – The term “dwelling unit” includes a house, apartment, condominium, mobile home, boat, or similar property, and all the structures or other property appurtenant to such dwelling unit.”

During the audit, and in his Appeal Statement for the year 1997, Pr. contended that expression “or similar property” suggests possible additional types of properties, similar to ones that were already listed. R. objected to this, contending that the given list, lists none property units, and expression “or similar property” defines the properties similar to none property units listed earlier. Pr. objected to such contention on the basis that, this would limit the list of the properties to the already listed only, pointing also that expression: “or other property appurtenant to such dwelling unit”- is very suggestive that, all dwelling units listed in this definition are owned units, because it is impossible for the “other property” to be “appurtenant” to none property in the same unit. R. and T.C., however, remain convinced that “Dwelling Unit” definition describes both kind of Units: owned and rented, which was important argument for the T.C. in Court's Opinion; for R. in R.'s motions to the T.C., and in R.'s Side Brief to Court Of Appeals, with

all three contending that limitation of deductions by Sec.280A is applied to both kind of D.U., owned and rented. On account of such importance of this argument for the over named parties, and due to the fact that such argument apparently received affirmation in the Court of Appeals decision, Pr. would like to express his opinion that such argument is without legal merit; since, considering the fact that all taxpayers live in some kind of homes with physical description similar to D.U., definition of D.U. itself has no legal power to rule what deductions are limited and what are not, even, if only a part of the home is used for business; because limitation on deductions can be applied only to Expenses incurred in these Unites, but not to the Units itself! This Pr.'s opinion, however, should not repudiate Pr.'s contention that, in design of Legislature, definition of the D.U. was intended to describe only owned D.U. And as an evidence, possibly supplying additional weight to such Pr.'s contention, it is worth to note solid R.'s Publication No.10, entitled "Rental Income and Expenses" (*Part of the larger Publication -17, entitled "General Information"*). This publication consist of ten pages of very small size text, arranged in three columns, and it uses the term D.U. all throughout its content, and only in the meaning of property owned by taxpayer. On the page 70, of this publication, in the left column, the definition of the D.U. is located, and we quote a major part of it.

**"Dwelling Unit.** The rules in this section apply to vacation homes and other dwelling units. A dwelling unit includes a house, apartment, condominium, mobile home, boat or similar property." The whole text of this publication and its multiple examples do not leave any doubt that, definition of D.U. was cast by Legislature for specific purpose – to describe D.U. owned by taxpayer.

3. Another, and probably even more important question, in addition to those we already asked, is: Why legislature has not placed the Ordinary and Necessary Bus. Exp. under the Sec.280A limitation rule, and we will offer possible answer for that.

a). Business activity always involves risk of failure, which can equally happen to a small proprietor and to a powerful corporation. This is why survival of business, toward possible success is of major importance for the proprietor, its potential customers, or, in some cases, even for the whole nation, or the whole humanity, if the business has a worthwhile goal, which may take sometimes years to achieve. This is why, deduction of the business loss to any legitimate business in America is not used as a mean for undeserved financial



punishment, but allowed by IRC. Sec. 162 and Tr. Reg. 1.162-1. And this is why, it would be discriminatory to deny deduction of Business Loss to a businessman, who is using one part of the home that he owns or rents from the other, - for a business, and the other part - for a living; because the nature of the business, as an activity, does not change with the place where it is conducted. Business, depending on a location, can only be larger or smaller, be more or less convenient for the proprietor, and give more or less capabilities for him. But it will always remain just the same - business; and such actions as R. enforces, is clearly beyond the purpose of Sec.280A, and can truly create paradoxical results.

b). To illustrate the last, let us consider a hypothetical, but quite possible situation, in which two businessmen rent spaces for their businesses. The first businessman, can financially afford to rent two apartments. A studio apartment for living, and one bedroom apartment exclusively for business. The second businessman can not afford to rent two apartments. So, he rents from the same landlord, in the same building, a single two bedroom apartment, which costs him substantially less than two apartments; and he assigns exactly the same space, as the first businessman, for business, and the rest of the apartment - for living. Let us imagine that, both businessmen did their best to succeed, but at the end of the tax year came with net loss for business; but the one, using the whole apartment for business, sustained even bigger loss than the other, which was using only the part. There is no question for the R. that, the first businessman, one that was using the whole apartment for business, can deduct his business loss fully; but the second businessman, which was using, even if equal size, part of the apartment - can not, according to R.'s position. But let us consider following: Both businessmen are renters. Both have completely equal, in legal sense, Rental Contracts. Both use the same physical entity, which is the same size part of the same building, and both use this part of the building exclusively for business. Why discriminate one, which created even more net profit, against the other? Why discriminate one in regard to the business survival against the other, and why use Sec.280A, as a mean for unfair and undeserved financial punishment? And why discriminate the second businessman against the other in regard to Equal Chance For Pursuit Of Happiness? Pr. has only one answer to all these questions. Pr. does not know of any existing Laws in This Country,

which would allow R. to treat these two businessmen differently in regard to the net business loss.

### **Part E. - What Happened At The Tax Court And How Tax Court Arrived To Its Decision?**

1. Pr., in his Initial Trial Arguments, which T.C. agreed to accept in writing only, clearly explained to Court why Pr. claims his Rental Deductions under Sec.162, and not under Sec.280A, by the same reasons, presented by Pr. on previous pages, with exception only of Sec.280A's 1985 Amendment. Court, during very short open session, demonstrated initial understanding of Pr.'s choice of Sec.162; and while R., in response to Court question, stated that this case can be decided upon within fifteen minutes, Court announced that, it will not judge this case from the bench, but will issue its Opinion within three month.

2. In its Opinion, T.C. announced from the start that, it will formulate it completely beyond Burden of Proof, allowing itself to completely ignore P.'s Trial Arguments, and simultaneously shield R. from Legal Dialog with Pr., by declaring that, in such circumstance it is not necessary to decide whether R. should prove anything at all. By this act, Court neutralized both: Pr.'s Legal Arguments and Pr.'s ability to play equal part in judicial process, and made Pr. just a passive observer of whatever Court will say or do, which equaled, in Pr.'s opinion, complete denial to Pr. his Constitutional Right for Equal Access to The Due Process under the Law, since such Court's approach allowed Pr. only the act of filing his documents. In addition to this, rejection by the T.C. of all Pr.'s arguments, resulted in depriving Pr. from Equal Constitutional Protection under Tr. Reg. 1.280A-1,2, Tr. Reg. 1.162-1, and IRC. Sec.162, (and farther down the line, from protection by the Text of Sec.280A Legislative Amendment), all of which shielded Pr. from possible unjust taxation, and on which Tax Laws, exactly how they are written, Pr. based his case; and especially, because three of these Tax Laws were never considered in similar cases, and only one, Sec.162, was only casually mentioned. Naturally, Pr., in the position that Court put him, wasn't able to do anything in this regard, because Court simply didn't speak with Pr., but only ordered him. Pr. has filed several Protest Motions to the Court, asking for oral hearing, and evaluation of his arguments on their legal merit, but all of them were flatly denied. All of this, lead to situation that, from the start

and to the end of Court proceedings, Pr. had only R. to deal with, and this one - was the Court itself!

3. To justify the total rejection of Pr.'s Burden of Proof, Court first disregarded U.S. Code section 7491, not taking in account the facts that: **A).** Pr. presented credible evidence in support of his position, contained in precise formulations of several, related to his case, Tax Laws, which were never, in depth, or at all, considered in similar cases, as a challenge to Sec.280A supposed ruling authority over Ordinary and Necessary Bus. Exp. **B).** Pr. presented all tax returns backing records to the auditors, including detailed plans, and step by step detailed photographs of his business, beginning from the building's street view, to the views of Pr.'s business rooms from all angles; package of receipts, confirming that all business furnishing and equipment was purchased in advance of Pr. renting this flat, primarily, for business purposes, and photographs from Pr.'s art works; and no auditor ever complained that Pr.'s tax records were insufficient. **C).** Stipulation of Facts was signed by both sides and presented to Court in the timely manner; and this is why, Pr. have to stipulate that, Court's footnotes, in Court's Opinion, in regard to R. not challenging the Business Percentage of Pr.'s business space; and not paying attention to the slight increase of this percentage in 1998, - are out of place and not accurate; since Pr. presented to R.'s auditors two different plans of his business areas, each for each year, and 1998 plan was including Pr.'s Garage space on the ground floor, which Pr. used in 1998 exclusively for business, while parking his car on the street. It has to be noted also that, during the short opening session, Court specifically asked R., if he had, or has now, any objection to the Pr.'s Business percentage usage of the Pr.'s apartment, and R. answered - "no". And, at the same opening session Pr. specifically asked Court for the Oral Hearing to present his legal position; and both sides declared in their Trial Memorandums their intention to call witnesses, if such need will arise during the hearing. But Court did not allow the Hearing. The Rule 142 (a)(1) was also erroneously interpreted by the Court, because Pr. has assumed all possible responsibility for the Burden of Proof for his legal position, but it is Court that killed it from the start in all respects. And it was R., who refused to enter in legal dialog with Pr. during pre-trial appeals review, in which R., in writing, declined to answer not only to any specific tax laws based arguments, but to the Constitutional arguments also, which was R.'s



special obligation to answer by the Rule CFR 601.106(b) and IRM 8.1.2.2.5. The same attitude R.'s counsel held in advance of Trial.

4. To justify its arguments rejection actions, and the other, Court cited two Supreme Court cases:

INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992) and Welch v. Helvering, Commissioner of IRS, 290 U.S. 111, 115 (1933). Both of these cases, however, do not extend to Court any support for the rejection of Pr.'s Burden of Proof. Both cases are not related to Sec.280A at all, and neither they related to the challenge by Pr. that it is Sec.162, and not Sec.280A, which is authorized to rule over Bus. Exp. deductions. Both cases are related to Sec.162, but on completely different matter. In both cases, Supreme Court has decided that corporate Capital Expenditures, destined, in INDOPCO case, - to improve its corporate structure for the long time effect, and in Welch case, - to improve its business image in corporate world, - do not necessarily belong to the Ordinary and Necessary Bus. Exp. In INDOPCO case, Court in fact, lists several conditions for the Bus. Exp. to qualify for deductions under Sec.162, as "ordinary and necessary". These are: **First** - "an item must be paid or incurred during the taxable year"; **Second** - "be for carrying on any trade or business"; **Third** - "be an expense"; **Fourth** - "be a necessary expense"; **Fifth** - "be an ordinary expense" for which qualification the expense must relate to transaction "of common or frequent occurrence in the type of business involved". (quotes) There is hardly an objection can be raised against that, Pr.'s business percentage of his month to month rent and utilities payments, fully conform to all these Supreme Court's conditions.

5. To bring Court's Opinion to final conclusion, which would fully support R.'s attempt for taxing P.'s Bus. Exp., Court has chosen a complex road, trying first - to accept Pr.'s right to claim his Bus. Rental Deductions under Sec.162, and then - to find the way around it through IRC., and prove that Sec.162 is legally subjugated to Sec.280A; and thus, can be subject to Sec.280A restrictions. This choice of the Court, however, in opinion of Pr., was destined for the failure from the start; because if Pr.'s BRPs. are not included in Sec.280A as an Item over which Sec.280A rules on its own, (the absence of legal basis to rule over Strictly Business Expenses and impose taxes on them, as we showed Earlier), - how Court may hope to find the specific rule outside this Section, which would empower

Sec.280A to do, what it is not suppose to do in the first place, by the design of Legislature.

6. The text of Tax Court's Opinion testifies that Court tried to prove this maneuver worthwhile, not only to the Pr. and R. or anyone else, but although to itself, - with help of slight, but important omissions from Sec.162, complete ignorance toward existence of Tr. Reg. 1.280A-1,2 and 1.162-1, and misinterpretation of Sec.280A's Legislative Amendment, by reformulation of its most important rulings, so that they will fit Court's position on application of Sec.280A.

7. It is worth to note that, *(on the Page 5 of Court's Opinion, A-1 in Appendix)* the very title of Point A: "Deduction for Business Use of Home", under which Court quotes second part, subparagraph (3) of major ruling of Sec.162, - is capable immediately to throw reader from the track of precise legal meaning of the whole of 162(a)(3) - toward the needed for Court direction, and create an impression that, Pr.'s BRPs. do not belong to the Ordinary and Necessary Bus. Exp., - fully deductible within the year of the business; but that they are part of the expenses for The Business Use of Home. And, while it is true that, Pr. attached to his Schedule C, Form 8829, is has to be noted that, there are no other form, which is available for taxpayers, like Pr., to declare the business usage percentage, and to calculate their Rent and Utility payments. But, while filling out this form, Pr. typed right under its title that, the home is not owned but rented.

8. On the Page 6 of its Opinion, *(A-1 in Appendix)* Court undertakes its attempt to prove dominance of Sec.280A over Sec.162.; and we will respond to it here in the same way we responded to T.C. in Pr.'s Motion For Reconsideration:

a). When T.C. accepted Pr.'s right to deduct his BRPs. under Sec.162, Court unwillingly and in-admittedly, but still evidentially, accepted all previous Pr.'s Legal Arguments in regard to Sec.280A, similar to given in this petition, - which Court refused to consider. It is thanks to These Arguments that Court realized that, Pr.'s BRPs. are not specified in Sec.280A, as an Item over which Sec.280A rules, and realized that Sec.280A is powerless on its own to rule over the Ordinary and Necessary Bus. Exp.; and these expenses are truly and specifically defined and ruled over by Sec.162.

b). After briefly accepting Pr.'s right to deduct his BRPs. under Sec.162, - Court, in Pr.'s opinion, was just one step away from Proper and Just Decision, which could be formulated by Court's

reliance on Tr. Reg. 1.162-1, which allows deduction of Ordinary Bus. Exp. in full in the current business year, even if such expenses surpass Gross Income of business; but Court have chosen a path, which erroneously lead Court beyond Sec.1.162-1, and this is why the means, that Court used on the way to intended proof, don't have adequate to the Court's purpose legal standing in the IRC.

c). *(In the second from the top paragraph on Page 6 of Court Opinion, A-1)*. Court makes accent on the word "Structurally", while relating to us the Navigational addresses within the IRC. to Sec.162 and Sec.280A. Through this listing of certain subpart of the part, which, in its own turn, is the subpart of something bigger, and so on, Court intends to create impression that, because Sec.162 is located in Part VI (*Itemized Deductions For Individuals And Corporations*), along with Sec.161; and Sec.161 contains reference to Part IX where Sec.261 is located along with S.280A that, Court will be able to establish, with help of Sec.261, that Sec.280A has legal dominance over Sec.162. In the end of this paragraph (*page 6, A-1*), Court is actually suggesting that, Sec.162 was placed in IRC. specifically to be subjugated to Sec.280A?! To support such conclusion, Court mentioned *New Colonial Ice Co. v. Halvering*, 292 U.S. 435, 440 (1934), which, in our opinion, can not yield to Court anything, because it is this Pr., who came precisely within express provisions of the statute in the current case, and it is T.C., which has completely ignored all express provisions in all statutes, intimately related to Pr.'s deductions. And in addition to this, Court's effort, in our opinion, can not possibly succeed by the following reasons:

**First:** The Addresses to individual Sections in IRC. that Court supplies, even while indicating the location of individual section within certain part, help us mostly to quicker locate the needed section, but do not contain in themselves any specific Legal Means or Specific Instructions, establishing interaction between variety of different, and often unique, IRC. sections, which differ by the purpose, and specific expenses they rule upon. Such addresses, in Pr. opinion, can be called Navigational Addresses, similar to ones we use in Microsoft Windows Explorer, were folders and subfolder are grouped together just for convenience to locate them quicker.

**Second:** There are over 30 (thirty) IRC. Sections located in Part VI, where Sec.162 is located, and the same amount of Sections located in Part IX, where Sec.280A is located; and each one of these Sections is devoted to regulation of deductions of completely

different and often unique variety of expenses; and each Section contains its specific rules. It is virtually impossible to formulate the Universal Rule, which will be able to encompass all this variety and complicity, especially in such short references as Sec.161 and Sec.261, on which Court tries to rely to prove its point.

**Third:** To overcome such logistic impossibility of formulating any kind of Universal Rule, specifically pointing to possible interactions between all principally different Sections, IRC. already uses the best and the most direct way to fulfill this task, which is called Cross-References between Sections, - located, if needed, in each individual Section. And in this regard it has to be repeated what Pr. related to R. and to T.C. on multiple occasions, and what was equally included in Pr.'s Brief and Contra Brief to Court of Appeals. There is only one Cross-Reference in Sec.280A toward Sec.162, but absolutely not in regard to Pr.'s Business Deductions; and while Sec.162 contains **many** Cross-References, **none of them are related to Sec.280A**, which is an extremely important evidence of the absence of any interaction between Sec.162 and Sec.280A in regard to Pr.'s BRPs. This extremely important legal fact was completely and equally ignored by the R., Tax Court, and Court of Appeals.

**Fourth:** While Sections 161 and 261 certainly cannot pretend to serve as universal rules for variety of nearly 70 (seventy) different IRC. Sections included in parts VI and IX, let us objectively examine what they contain in themselves in reality. **Sec.161 states:** (*we quote*) "In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part (i.e., part VI), subject to the exceptions provided in part IX (Sec. 261 and following, relating to items not deductible)." Now, while this Section tells us something, it is not telling us anything specific, not even counting that Ordinary and Necessary Bus. Exp. are a deductible item, because they are the essence of the business process, without which Business is not possible; and Sec.162 and Tr. Reg. 1.162-1 have no buts or ifs in this regard. And **Sec.261 States:** (*we quote*) "In computing taxable income no deductions shall in any case be allowed in respect of the items specified in this part (i.e., part IX)."

Considering already established, and by T.C. itself recognized fact that, Pr.'s BRPs. are not specified in Sec.280A, located in Part IX, they are not specified in Part IX itself. And because they are not "items not deductible" of Sec.161, and definitely not specified in Part IX under Sec.261, both of these Sections have nothing to do



with them whatsoever! But with this established, it is worth to say a few words about Sec.261, and what it tells us. It tells us that, after this section, end comes to any deductions. "No deductions shall in any case be allowed." This is the end of it. No more. Zero. Zilch. Taxpayers, Tax Prepares, Tax Examiners, don't even look father. There is no light in the end of the tunnel after Sec.261. All is hopeless. But is it true? No, it isn't. There are allowed deductions in Sec.280A already, as well as in other sections in Part IX. Which, immediately proves that, Sec.261 is not universally applicable to all and any deductions in the Part IX, while it may be applicable to some of them - totally, and to some - in limited way, in some Sections. But, if Sec.261 is to be applied literally, it easily can become an instrument of abuse, because one can use it in any way one wants. After telling all of this to the T.C., Pr. suggested to T.C. only one plausible characterization of Sec.161 and 261: Sec.161 and 261 are not specific or universal rulings. **They create only General Awareness** that, in some circumstances, certain deductions can be allowed in full, in some - only partially, and in some - not allowed at all. The specific rules in this regard, are contained in Specific IRC. Sections, Cross-References between them, placed in individual Sections, and Tr. Reg. enacted as their Legal Extensions.

9. Pr. also related to the T.C. that, when U.S. Treasury enacts the specific Regulation as Legal Extension of Specific Section, it does it with explicit permission and authorization of U.S. Congress, and with complete and exhaustive knowledge of Internal Revenue Code. Thus, it is permissible to say that, Specific IRC Section, along with its Treasury Regulations, - constitute the Final Will of U.S. Congress toward the items over which this Specific Section rules.

10. Thus, Pr. concluded: Tax Court has not succeeded to prove that Sec.280A possesses legal dominance over Sec.162, and can limit Deduction of Ordinary and Necessary Bus. Exp. of Pr.

11. It has to be noted also that, after T.C. seemingly convinced itself that, it succeeded in proving legal dominance of Sec.280A over Sec.162, Court, which was first to open the door to Legislative (1985) Amendment of Sec.280A, interpreted this Amendment in convenient to Court way, without any attention to it sharp differentiation between two kind of Expenses, such as Home Office Deduction and Expenses as result of Business Activity, **which Legislative Opinion does not even allow to allocate to the Home Office Deductions!** *(In the middle of the Page 7 of Court's Opinion,*

*A-1, Court says):* "In other words, no deduction for use of an apartment may be claimed if said deductions would give rise, or increase a net loss from the business to which the deduction relates". (*And what happened to "...create or increase...if we may ask"?*) The substitution of **"create or increase"**, in Legislative Ruling of Sec.280A, by **"give rise or increase"**, creates major distortion and profound misinterpretation in this important Ruling, which is at the very heart of this case; but Court does it anyway, even, if by **quoting** the same ruling (*at the top of Page 8 of its Opinion, A-1*), Court has no escape, but to use expression **"create and increase"**, - in total contradiction with Court's interpretation of this ruling on the previous page. In the same Court's interpretation, Court again tries to use the expression "use of an apartment", as the mean - to extract Pr.'s BRPs. out of Sec.162, and to relocate them in the same category with Homeowners Expenses, which have nothing to do with Business; overstepping the fact that, Pr.'s BRPs are not even included in the same List with Expenses, given in Tr. Reg. 1.280A-1,2. And, all of a sudden, Pr.'s Business Rental deductions become, in T.C. words, "...no deductions maybe claimed". It is here that we can observe, how the Misconception, and Myth, we were talking about, is given birth, without regard to actual and precise Letter And Sound of the Law.

Pr.'s Motion for Reconsideration of Court's Opinion, which contained Pr.'s objections to T.C. reasoning, similar to presented in this part, and part "C", was flatly denied by the T.C. with all Pr.'s arguments brushed aside, as not deserving Court's attention, similarly to initial Pr.'s Burden of Proof, along with all Tax Laws, on which both of these were scrupulously based. T.C.'s Order of denial of Pr.'s Motion for Reconsideration (*see Appendix A-2*) is, in its own way, a remarkable, and special document. Its meaning is: we wouldn't talk to you now, because we refused to talk to you before.

12. It is true that, to the end of T.C. proceedings Pr. was ordered to submit Response to the R.'s Motion for Decision Entry, and allowed to submit Motion to Vacate or Revise the Decision, where Pr. again insisted on his equal rights of equal participation in Judicial Process, and reminded Court of his rights under the Tax Laws, which were totally ignored by the Court, all of it was left without any attention by the Court, because all of these Motions we allowed by the Court only as procedural formalities, and all of them were flatly denied. As a final moment of conclusion of the T.C. case, it is worth to note

that, Court's Decision was entered in exact text, suggested by the R., without additional legal commentaries. (*See Appendix A-3*)

**Part F. - What happened at the United States Court Of Appeals for The 9<sup>th</sup> Circuit?** (*Judges: Fernandez, Graber, and Gould*)

1. Pr. submitted his Appeals Brief to the Court Of Appeals repeating the same legal arguments, which were presented to Tax Court, and similarly included in this Petition, asking Court to reverse the Tax Court Decision within the process of Oral Hearing.

2. Respondent's Side submitted its Response, in complete agreement with Tax Court reasoning in entering its Decision for R., and Pr. submitted its Contra Brief even in more details, asking for reversal of T.C. Decision again and for Oral Hearing again.

3. In both of his briefs Pr. tried to bring Court's attentions to fact that Pr.'s legal arguments are precisely based on the Sec.162 and Tr. Reg. 1.162-1 and 1.280A-1,2, and on Legislative Opinion of the Congress in regard to proper application of Sec.280A; and that Legal Facts and rulings, contained in these Tax Laws and Regulations are not the Pr.'s inventions, but the Laws Themselves; and that these Tax Laws extend to Pr. Constitutional protection against possible improper application of Sec.280A, in limiting deduction of the Net Loss from his business, which is not the function of Sec.280A. Pr. also asked Court to consider the fact that, in no precedent cases, the laws, mentioned above in this paragraph, were brought to challenge power of Sec.280 over Ordinary and Necessary Bus. Exp; and that in this regard, this case is the precedent in itself, and thus deserves special attention and open hearing. But the Three Judges Panel totally ignored all the Tax Laws and Reg., listed in this paragraph, declaring Pr.'s legal contentions, precisely based on these laws – meritless, and based its decision on Sec.280A alone, and on a single precedent case, which will be discusses in part “G” of this petition; and entered its unpublished decision for the R. Pr.'s request for the Oral Hearing was denied. (*See Appendix A-4, and further A-5*)

4. Pr. submitted to Court of Appeals, Petition for Rehearing En Banc, emphasizing in all relative details that, R.'s Side completely disregarded important legal facts of Sec.162 and 280A, and totally ignored Tr. Reg. 1.162-1 and 1.280A-1,2, **and didn't even included these two in the list of legal authorities;** and also misinterpreted Legislative Opinion of the Congress, in regard to proper application of Sec.280A - but this Petition was denied on August 2, 2005.

**Part G. – Precedent Cases.** 1. Several precedent cases were



brought by R. to attention of the T.C., and many precedent cases were brought to attention of the Court Of Appeals by R.'s Side. Most of these cases were related to Homeowners, and only a few - to Businessmen-Renters like Pr. In some cases, quite a few in fact, Prs, belonging to both categories, were not even able to prove the fact that they indeed had a business activity in their homes, and some couldn't substantiate business expenses. In some of the cases, Sec.162 was casually mentioned, but not to necessary degree of its ruling weight, and no Pr. ever challenged Sec.280A, as one that has zero legal bases for limitation of deductions of Ordinary and Necessary Bus. Exp.; and no one ever brought to the Court attention that Sec.162 has no Cross-References with Sec.280A. From all the multiplicity of precedents, Court of Appeals selected only one - Horton v. Commissioner, on which T.C. also relied, and which was partially identical to this Pr. case, as Pr. herself was also an artist, and her business net loss was also on account of Business Rental Payments. This Pr. was also disallowed part of her business rental deductions; but the great difference between the precedent and this case was that, Ms. Horton never challenged the power of Sec.280A to rule over her business rental deductions, and she never relied in her deductions on Sec.162 and Tr. Reg. 1.162-1; and she never brought to Court's attention that, her BRPs. are not included in the List of Deductions, over which Sec.280A rules, and she never invoked 1985 Legislative Amendment, of Sec.280A. Instead, Ms. Horton claimed her deductions on some California State Law, which allowed such business deductions, as hers, in abandoned industrial building, where her business and living quarters were located, which law, as judge have decided, had no jurisdiction in cases of federal disputes. Decision was entered for R., but in Pr.'s opinion, T.C. in this case acted under the same misconception in regard to legal powers of Sec.280A, which this Pr. is trying to dispel in his case. In this regard, in Pr.'s opinion, all similar, or near similar, to Pr.'s case precedents, in which Sec.280A was applied to deny deduction of substantiated Net Business Loss, are no more, than sad chain of Judicial Accidents, with each next one based on the previous.

2. In regard of this part "G", and the whole of this current case, much more attention deserve two historic precedents that Legislative Committee of Congress reviewed as typical examples, as reason for Sec.280A's 1985 Amendment. In both cases Prs. are homeowners,

which is telling by itself. In the first T.C. case, Feldman v Commissioner, 84 T.C. 1 (1985), Pr. rented part of his home to his employer, as a place for Pr.'s office space, at the convenience of his employer. Pr. thus deducted his rental business expenses, for the business percentage of his property, adding to it deductions for insurance, utilities, city charges, pest control, repairs, and maid service. Pr. also deducted proportional part of home depreciation. This particular case has no analogy to this P.'s case, and the only reason we mentioned it, is to explain Committee's mentioning in the same brackets, in the beginning of its opinion – (e.g., rent, depreciation, and repairs), were rental expenses are related to rental use of the dwelling unit.

In second case, Scott v. Commissioner, 84 T.C. 683 (1985) Committee apparently disagreed with decision of the T.C., which amounted to allowance for deductions for the business use of one's home, to create or increase the net loss from the business activity itself, which was one of the main reasons for Sec.280A to be amended, by adding to paragraph (c )(5) subparagraph (ii), containing possible limitation on the deductions of typical Hmrs.' home office costs, on which meaning we elaborated in details in Part "C" of this petition. One is able to conclude, from familiarizing oneself with these two cases, brought by Committee to our attention, that the reasons for changes in Sec.280A were: to straighten the regulation of deductions, in cases where taxpayer rents part of his dwelling unit to his employer, as his working space at convenience of his employer; and to establish limitations on deductions of the typical homeowners' expenses for the business use of home, in cases where such deductions can create or increase the net loss from the business activity itself. It is worth to note that, both of this cases, and especially the second one, where Committee demonstrates its concern, not with deduction of the business net loss in this case, but with allowance by the T.C. to deduct Expenses for the Business Use of Home, which were increasing the Net Loss from business, - fully support Pr.'s understanding of Legislative Amendment of Sec.280A.

#### **CONCLUSION on Issue No.1**

After considering previous precedents, Pr. wants to bring Court's attention, once more, to the most important one, which is this case; because in all listed in this case past precedents, Courts always were able to enter decision for R. on the basis Sec.280A alone. It is only in this case that, T.C., however unwillingly, acknowledged that Pr.'s

BRPs. are **specified and ruled upon directly - only** in Sec.162. In this case, T.C. simply had no legal escape from this legal fact; and had to quote the ruling paragraph of Sec.162, (*while omitting the first part of it*), which states that all the Ordinary and Necessary Bus. Exp. are deductible in the current business year. But because omission doesn't eliminate the written rule of law, T.C. definitely struggled to find something, which does not exist in IRC., which would be - some specific ruling that Sec.280 has legal power over Sec.162; and, as we already proved, Sections 161 and 261 are not capable to yield such conclusion, because both of them **lack any specific rulings**, which can assert it; because both of these sections - are no more, than awareness remarks that, something could happen down the road, but as we already know, only in specific IRC. sections and under their specific rules, including specific cross-references with some other sections. The important thing, however, for this case is that, Sec. 161 and 261 were the last and the only arguments that T.C. relied upon, that it found what it was looking for in IRC., as a reason to enter its decision for R. But these last T.C.'s points of proof, **by their characteristic none-specificity**, lose their legal standing, **if compared with specific rulings and evidential facts** of Sec.162, Tr. Reg. 1.280A-1,2, and 1.162-1; **and, especially**, with precise Instructions on the purpose and proper application of Sec.280A, given in Legislative Committee Opinion of Congress. In addition, if R., T.C., R.'s Side in the Court of Appeals, and Court of Appeals itself, - wouldn't ignore Tr. Reg. 1.162-1, they would be able to find there subparagraph (b) Cross references; and (b)(2), with following: (quote) "For items not deductible, see sections 261-276, inclusive, and regulations thereunder." And as we can clearly see, "inclusive" and "thereunder" includes only specific set of sections and regulations within them, and the list of sections does not include Sec.280A.

And in the end, the simple fact of this case, is that on account of some ambiguity in formulation of Sec.280A, when some of its major rulings remained in the text of its Amendment, and some very needed definitions such as "Expenses for The Business Use of Home", "Home Office Costs" and "Use of The Unit Itself" also remained there, while comprehensible, but not precisely defined; and with List of specified Home Office Deductions found only in Tr. Reg. 1.280A-1,2, - the intermixing of two completely separate legal themes have happened. The deductibility of Ordinary and Necessary

Bus. Exp. within any legitimate business setting, which never has been challenged for decades, has been intermixed with conditioned and limited deductibility of Homeowners' Payments in the Equity of Their Homes, known, by the Congress given name, as Expenses for The Business Use of Home.

The legal theme of this Petition, is to untangle, with help and wise considerations of this Court, this strange intermix, and to set things straight for everybody's benefits, Petitioners, Respondent and Lower Courts. This is why, Petitioner hopes that the Writ of The Certiorari in this case should be granted, and Decision of the Lower Courts in this issue should be reversed.

### **Issue No. 2 Deduction of Capital Expenditures.**

As T.C. has admitted, Pr. has included Capital Expenditures in his deductions in Schedule C, as separate deduction category under The Title - Computer Hardware and Software, which clearly falls under the Capital Expenditures definitions; and which inclusion, in Pr.'s opinion, does constitute a Desire, which is the same as Election, which means only the expression of choice to claim such deduction, which Pr. certainly did. Also, when Congress allowed deductions of Capital Expenditures in full in the same year of the Business, within the allowable limits, - these deductions became an Important Business Entitlement, to help survival of the business; which, probably, should not be easily denied under the rigid deadlines, without sending to Pr. notification from R. that, Pr. needs to fill out and supply an additional form, for his Capital Expenditures to be deducted; or to supply amended Tax Return with inclusion of such form. R., probably, can be entitled, in such case, for a certain fee for the delayed Tax Return. But, while T.C. indicates that Pr. was entitled to supply amended tax return; Court doesn't takes in account that, Pr. never received from R. any notification that something is amiss in his Tax return. And because such notification was never sent to Pr., for Pr. to be alerted that he must send an amended return, of fill our and sent to R. special form, which could be attached to R.'s notification; Pr. only contends that, these deductions could be allowed to Pr. by the R.'s Auditor, which checked Pr.'s Capital Expenditures purchase invoices, each one bearing Pr.'s name, and made accurate copies of each one of them, and with which help necessary form could be filled out on the spot.

Pr. asks Court, to take this Pr.'s reasoning under the Writ of Certiorari consideration.

05-799 DEC 12 2005

No.  
OFFICE OF THE CLERK

In The  
**Supreme Court of the United States**

Michael H. Visin  
Natalie Marselly *Petitioners*

v.

Commissioner of Internal Revenue Service  
*Respondent*

On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The 9<sup>th</sup> Circuit

**APPENDIX**

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T.C. Memo. 2003 – 246

**UNITED STATES TAX COURT**

**Michael H. Visin and Natalie Marselly, Petitioners V.  
Commissioner of Internal Revenue , Respondent**

**Docket No. 10149-02**

**Filed August 18, 2003**

**Michael H Visin, pro se**

**Frank Panza, for respondent**

**MEMORANDUM FINDINGS OF FACT AND OPINION**

**Armen, Special Trial Judge: Respondent determined  
Deficiencies in petitioners' Federal income taxes for the taxable  
Years 1997 and 1998 in the amount of \$1,393 and \$1,365  
Respectively.**

**SERVED AUG 18 2003**

After a concession by petitioners,<sup>1</sup> the issues for decision by the Court are as follows:

- (1) Whether for each of the years in issue, petitioners' deduction for the business use of their apartment is subject to the limitation on deductions set forth in section 280A(c)(5).<sup>2</sup>
- (2) We hold that it is.
- (3) Whether for 1998, petitioners are entitled to expense, rather than depreciate, the cost of computer equipment and software. We hold that they are not.

An adjustment to petitioner's self-employed health insurance deduction under section 162(1) is a mechanical matter, the resolution of which is dependent on our disposition of the disputed issues. See sec. 162(1)(2)(A).

#### FINDING OF FACTS

Some of the facts have been stipulated, and they are so found. Petitioners resided in San Francisco, California, at the time that the petition was filed with the Court.

During 1997 and 1998, the taxable years in issue, petitioner Michael H. Visin was self-employed as an interior decorator and artist, and petitioner Natalie Marselly was employed as social worker.

Throughout the years in issue, petitioners resided in the same apartment, which they rented. A portion of petitioners' apartment was used by petitioner Michael H. Visin for business purposes. In 1998, petitioner Michael H. Visin spent \$3,450 for computer equipment and software for use in his business. The computer equipment and software were placed in service upon purchase.

Petitioners filed Form 1040, U.S. Individual Income Tax Return, for each of the year in issue. Petitioners attached to each of those returns a Schedule C, Profit or Loss From Business, for petitioner Michael H. Visin sole proprietorship. Among the deductions claimed

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<sup>1</sup> At trial, petitioner did not contest, and are therefore deemed to have conceded, an adjustment in the amount of \$703 to cost of goods sold for 1997.

<sup>2</sup> Unless otherwise indicated, all section references are the Internal Revenue Code as in effect for 1997 and 1998, the taxable years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

on each Schedule C was a deduction for petitioner Michael H. Visin's use of petitioners' apartment for business purposes. In support of this deduction, petitioners attached to each of their returns a Form, 8829, Expenses for Business Use of Your Home. Petitioners' Schedule C for 1997 included the following entries:

|                                 |             |
|---------------------------------|-------------|
| Gross income                    | \$5,399.00  |
| Less: expenses (excluding rent) | -4,392.40   |
|                                 | -----       |
|                                 | 1,006.60    |
| Less: rent                      | -10,305.27  |
|                                 | -----       |
| Net loss                        | ( 9,298.67) |

Petitioners' Form 8829 for 1997 included the following entries:

|  |      |
|--|------|
| Area used regularly and exclusively for business | 700  |
| Total area of home                               | 1000 |

Business use percentage 70 Presumably, square feet

Petitioners used the foregoing percentage in claiming the Schedule C rent deduction of \$10, 305.25

Petitioners' Schedule C for 1998 included the following entries:

|                                |             |
|--------------------------------|-------------|
| Gross income                   | \$6,243.70  |
| Less expenses (excluding rent) | - 4,243.63  |
|                                | -----       |
|                                | 1,999.07    |
| Less rent                      | -10,642.58  |
|                                | -----       |
| Net loss                       | ( 8,643.51) |

Petitioner's Form 8829 for 1998 included the following entries:

|  |      |
|--|------|
| Area used regularly and exclusively for business | 850  |
| Total area of home                               | 1150 |

Business use percentage 74 Presumably, square feet

Petitioners used the foregoing percentage in claiming the Schedule C Rent deduction of \$10,642.58<sup>3</sup>

In reporting gross income from his sole proprietorship for 1998, Petitioner Michael H. Visin reduced gross receipts by cost of good

---

<sup>3</sup> The record does not disclose the reason for the discrepancies between petitioners' Form 8829 for 1997 and Form 8829 for 1998 regarding "Area used \*\*\* for business" and "Total area of home"

sold. In part III of his schedule V for 1998, petitioner Michael H. Visin claimed cost of goods as follows:

|  |            |
|--|------------|
| Materials and supplies                       | \$2,847.30 |
| Other costs: computer equipment and software | +3,450.00  |
| Cost of goods sold                           | 6,297.30   |

Petitioners did not attach to their 1998 income tax return a Form 4562, Depreciation and Amortization. Part I of that form is entitled "Election To expense Certain Tangible Property (Section 179)", and it is the form that respondent designed for taxpayers who wish to expense, rather than depreciate, qualifying property.

In the notice of deficiency, respondent disallowed a portion of the deductions claimed by petitioners in 1997 and 1998 for the business use of their apartment. Respondent based the disallowance solely on the limitation on limitation of deduction set forth in section 280A (c )(5). Respondent did not adjust either the gross amount claimed by petitioners for the rental of their apartment or the business use percentage on their form 8829.

Also in notice of deficiency, respondent treated the \$3,450 spent by petitioner Michael H. Visin for computer equipment and software for his business as a capital expenditure and allowed depreciation thereon.

Petitioner do not contest respondent's computation of limitation on deductions under section 280A (c )(5). Rather, petitioners contend that section 280A does not apply to renters or business property and that, therefore, the limitation on deduction under section 280A(c )(5) does not apply to their case. Rather, Petitioners contend that section 162(a)(3) authorizes deductions in issue.

Petitioners also contend that they are entitled to expense, pursuant to section 179, the \$3,450 spent by petitioner Michael H. Visin for computer equipment and software for use in his business.

### OPINION

We decide the issue in this case without regard to the burden of proof. Accordingly, there is no reason to decide whether section 7491(a) serves to shift the burden of proof from petitioner to respondent. See generally Rule 142(a); *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); *Welch v. Helvering*, 290 U.S. 111, 115 (1933).

A. Deduction for Business Use of Home  
Section 162 (a)(3) allows a deduction for:



rentals or other payments required to be paid as a condition to the continued use or possession, for purposes of trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

Structurally, section 162 is included in part VI (Itemized Deductions For Individuals And Corporations) of subchapter B (Computation of Taxable Income) of chapter 1 (Normal Taxes and Surtaxes) of subtitle A (Income Taxes) of title 26 (Internal revenue Code) of the United States Code. The relevance of the placement of section 162 within the Internal revenue Code will become apparent momentarily.

Also included within part VI is section 161. That section provides as follows:

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part [i.e., part VI], subject to the exceptions provided in part IX (section 261 and following, related to items not deductible). [Emphasis added]

Section 261, which is entitled "General Rule For Disallowance Of deductions", provides that "In computing taxable income no deduction shall in any case be allowed in respect of the items specified in this part [i.e., part IX]." One of the sections included in part IX is section 280A.

At this point it should be apparent that section 162 is subject to the exceptions and constraints of section 280A. See New Colonial Ice Co. v. Halvering, 292 U.S. 435, 440 (1934) (often cited for the proposition that deductions are a matter of legislative grace and hence a taxpayer claiming a deduction must come within the express provisions of the statute).

As relevant herein, section 280A(a) provides as a general rule that no deduction otherwise allowable to an individual "shall be allowed with respect to the use of the dwelling unit which is used by the taxpayer during the taxable year as a residence" The term "dwelling unit" is defined by 280A(f)(1)(A) to specifically include an apartment. The statute did not distinguish between a condominium apartment and a rental apartment. In other words, whether owned or rented, an apartment is a dwelling unit within the meaning of the statute. See Horton v. Commissioner, T.C. Memo. 1997-572 (involving an artist who rented premises in a commercially zoned area, which premises were found by the Court to be a dwelling unit

Within the scope of the section 280A).

The seemingly prohibitory rule of section 280(a) is ameliorated by section 280A(c ), which provides exceptions for certain business uses. As relevant herein, section 280A(c )(1) provides that general rule of section 280A(a) is not applicable to any items to the extent it:

Is allocable to a portion of the dwelling unit which is exclusively used on a regular basis --

- (A) as the principal place of business for any trade or business of the taxpayer, [or]
- (B) as a place of business which is used by patient, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business\* \* \*.

The liberalizing effect of section 280A(c ) is not without its limitations, however. In particular, as relevant herein, section 280A(c )(5) limits taxpayer' deductions for the business use of the apartment to the amount by which the gross income generated from the business activity conducted in the apartment exceeds the deductions for expenses attributable to such activity that are not allocable to the business use of the apartment itself. See Martin v. Commissioner, T.C. Memo. 1996-503, affd. per curiam without published opinion 155 F. 3d 559 (4<sup>th</sup> Cir. 1998). In other words, no deduction for use of an apartment may be claimed if said deduction would give rise to, or increase, a net loss from the business to which the deduction relates. Id.

The foregoing exegesis of section 280A(c )(5) is confirmed by the legislative history of the most recent relevant amendment to that section. Thus:

Reason for Change

Limitation on deduction

\* \* \* \* \*

The committee believes that a home office deductions to which section 280A applies should not be used to reduce taxable income from the activity to less than zero. In adopting the provision of the bill, the committee reemphasizes that section was enacted because of concerns about allowing deductions for items which have a substantial personal component relating to the home, which most taxpayer cannot deduct, and which frequently do not reflect the incurring of significantly increased cost as a result of the business activity, and that provision should be interpreted to carry out its objectives.

\* \* \* \* \*

Explanation of Provision

\* \* \* \* \*

Limitation on deductions

In general. – The bills limits the amount of home office deduction (other than expenses that are deductible without regard to business use, such as home mortgage interest) to the taxpayer gross income from the activity, reduced by all other deductible expenses attributable to the activity but not allocated to the use of the unit itself. Thus, home office deductions are not allowed to the extent that they create or increase a net loss from business from the business activity to which they relate. [H. Rept. 99-426, at 133-135 (1985) 1986-3 C.B. (Vol. 2) 133-135].]

Finally, for petitioners' benefit, we observe that to extent deductions are disallowed under section 280A(c)(5), they may be carried forward to the succeeding taxable year. See sec.280A(c)(5), flush language.

In the view of foregoing, we hold that petitioners' deductions for the business use of their apartment are subject to the limitation set forth in section 280A(c)(5). Accordingly, we sustain respondent's determination in this regard.

B. Election To Expense Certain Costs Under Section 179

Section 179(a) permits to taxpayer to:

Elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

In respondent's view, the computer equipment and software that petitioner Michael H. Visin purchased and placed in service in 1998 May not be expenses under section 179, because petitioners failed to make an election on their return consistent with section 179(c) and the regulations thereunder.

Section 179(c)(1) provides that an election under section 179 shall:

- (A) specify the items of section 179 property to which the election applies, and the portion of the cost of each of such items which is to be taken into account under subsection (a), and
- (B) be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Section 179(c)(1) goes on to provide that the election to expense “shall be made in such manner as the secretary may by regulation prescribe.”

Regulations regarding the time and manner of making an election under section 179 have been prescribed and may be found in section 1.179-5, Income Tax Regs. Specifically, section 1.179-5(a), Income Tax Regs., requires a separate election for each taxable year and, as relevant herein, that such election be made on the taxpayer’s first income tax return for taxable year to which the election applies. The regulation goes on to track the statutory requirements of section 179(c)(1)(A) and (B). Finally the regulation requires that the taxpayer maintain certain records regarding each piece of section 179 property.

The Commissioner has published Form 4562, Part I of which is entitled “Election To expense Certain Tangible Property (Section 179)”, and, as its title suggests, is intended for taxpayer’s use in making the election to expense section 179 property.

Petitioners did not attach to their 1998 income tax return a Form 4562, nor did they unequivocally elect on their return to expense the cost of the computer equipment and software under section 179. On the other hand, petitioners did include the cost of that property as a component of cost of goods sold. However, we are not inclined to regard the inclusion of the property in the cost of goods sold as the equivalent of an election under section 179. See Patton v. Commissioner, 116 T.C. 206 (2001); McGrath v. Commissioner, T.C. Memo. 2002-231; Starr v. Commissioner, T.C. Memo. 1995-190 (“Entitlement to the benefits of section 179 is not automatic. It requires affirmative election be attached to the original return or to a timely filed amended return.”), *affd.* without published opinion 99 F.3d 1146 (9<sup>th</sup> Cir. 1995). In any event, we observe that the matter is without any tax effect in 1998 under the facts of the present case. In other words, to the extent that petitioners are denied an expensing deduction under section 179, they will be entitled to an increase, on a pro tanto basis, in the amount of their home office deduction under section 280A because the limitation imposed by section 280A(c)(5) will be that much less restrictive.

In the view of foregoing, we hold that petitioners are not entitled to expense the cost of the computer equipment and software. Respondent’s determination capitalizing the cost of such property and allowing depreciation thereon is sustained.

B. Conclusion

To reflect the foregoing,

Decision will be entered  
Under Rule 155.



**UNITED STATES TAX COURT**

WASHINGTON, DC 20217

**MICHAEL H. VISIN AND  
NATALIE MARSELY,**

Petitioners

v.

**COMMISSIONER OF  
INTERNAL REVENUE,**  
Respondent

Docket No. 10149-02

**ORDER**

On October 14, 2003, petitioners filed a motion for reconsideration, leave for the filing of which was granted. See Rule 161, Tax Court Rules of Practices and Procedure, requiring any motion for reconsideration of an opinion to be filed within 30 days after a written opinion has been served, unless the Court shall otherwise permit. The Court's opinion in this case was filed and served on August 18, 2003, as T.C. Memo. 2003-246.

On October 24, 2003, respondent filed a Response to Petitioners' Motion for reconsideration. In his response, respondent object to the granting of petitioners' motion.

We recently had occasion to summarize our jurisprudence regarding reconsideration of opinion under Rule 161, Tax Court Rules of Practices and Procedure:

Reconsideration under the Rule 161 permits us to correct manifest errors of fact of law, or to allow newly discovered evidence to be introduced that could not have been introduced before the filing of an opinion, even if the moving party had exercised due diligence. The granting of a motion for reconsideration rests within discretion of the Court, and we shall not grant a motion for reconsideration unless the party seeking reconsideration shows unusual circumstance or substantial error. Reconsideration is not the appropriate forum for rehashing previously rejected arguments or tendering new legal theories to reach the end result desired by the moving party. [Estate of Hadler v. Commissioner, T.C. Memo.

2003-246; citations omitted.]

In their Motion for Reconsideration, petitioners do little other than rehash their previously-rejected arguments. In addition, petitioners' argument regarding the burden of proof is irrelevant given the fact that "We decided the issue in this case without regard to the burden of proof." (Slip op. at 6.)

Upon due consideration, it is

ORDERED that petitioners' Motion for Reconsideration, filed on October 14, 2003, is denied.

(Signed) Robert N. Armen, Jr.

Robert N. Armen, Jr.  
Special Trial Judge

Dated: Washington, D.C.  
October 28, 2003

**UNITED STATES TAX COURT**

WASHINGTON, DC 20217

MICHAEL H. VISIN AND  
NATALIE MARSELLY

Petitioners

v.

Docket No. 10149-02

COMMISSIONER OF  
INTERNAL REVENUE

Respondent

**ORDER AND DECISION**

After due consideration of respondent's Motion For Entry Of decision, filed October 30, 2003, and petitioners' Response, filed December 1, 2003, it appearing to the court that petitioners do not dispute respondent's computation for entry of decision, and in order to give effect to the Court's disposition of issues in T.C. Memo. 2003-246, it is hereby

ORDERED that respondent's Motion For Entry of Decision, Filed October 30, 2003, is granted. It is further

ORDERED AND DECIDED that there are deficiencies in income taxes due from petitioners for the taxable years 1997 and 1998 in the amounts of \$1,393 and \$1,365, respectively.

(SIGNED) Robert N, Armen.Jr.

Robert N. Armen, Jr.  
Special Trial Judge

Entered: DEC 8 2003

**FEB 11 2005****NOT FOR PUBLICATION**CATHY A. CATTHERSON, C.  
U.S. COURT OF APPEALSUNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUITMICHAEL H. VISIN  
NATALIE MARSELLYNo. 04-71219  
Tax Ct. No. 10149-02

Petitioners-Appellants,

v.

COMMISIONER OF INTERNAL  
REVENUE

MEMORANDUM\*

Respondent-Appellee.

Appeal from a Decision of the  
United States Tax Court

Submitted February 7, 2005\*\*

Before: FERNANDEZ, GRABER, and GOULD, Circuit Judges

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2)

Michael H. Visin, a self-employed artist, and his wife, Natalie Marselly, appeal pro se the Tax Court's post-trial decision disallowing the deduction of certain business expenses for the 1997 and 1998 tax years. We have jurisdiction under 26 U.S.C. § 7482. We review de novo the Tax Court's conclusion of law, *Biehl v. C.I.R.*, 351 F.3d 982, 985 (9<sup>th</sup> Cir. 2003) and we affirm.

The Tax Court correctly held that taxpayers' home office deductions for rent and other expenses are properly limited by the Commissioner, in accordance with Internal revenue Code (I.R.C.) § 280A(c)(5), 26 U.S.C. § 280A(c)(5), to the income derived from Michael Visin's business. *See Horton v. Commissioner*, 74 T.C.M. (CCH) 1480, 1481 (1997).

The Tax Court also correctly held that because taxpayers failed to make a proper election on their 1998 income tax return, they were not entitled to "expense" under I.R.C. § 179 the cost of the computer equipment and software purchased this year. *See Starr v. Commissioner*, 69 T.C.M. (CCH) 2501, 2504 (1995), *aff'd by unpublished opinion*, 99 F.3d 1146 (9<sup>th</sup> Cir. 1996).

Taxpayers remaining contentions lack merit.

**AFFIRMED.**



**A - 5**

**NOT FOR PUBLICATION**

**FILED**  
CATHY A. CATTHERSON,  
U.S. COURT OF APPEALS  
Aug 02 2005

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

MICHAEL H. VISIN  
NATALIE MARSELLY  
Petitioners-Appellants,

v.

COMMISIONER OF INTERNAL  
REVENUE  
Respondent-Appellee.

No. 04-71219

Tax Ct. No. 10149-02

**ORDER**

Before: FERNANDEZ, GRABER, AND GOULD,  
Circuit Judges

Appellant's motion to recuse Judges Fernandez, Graber, and Gould is denied.

Appellant's motion for permission to attach 3 excerpts of record to the petition for rehearing en banc is denied,

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See Fed. R. App. P. 35*

The petition for rehearing en banc is denied.

Appellant's motion for clarification of notice from the court on extension of time to present the petition for rehearing is denied as moot.

No further filings will be accepted in this closed appeal.

Docket No. 05-799

MAR 18 2006

OFFICE OF THE CLERK

**In The**  
**Supreme Court of the United States**

Michael H. Visin  
Natalie Marselly *Petitioners*

v.

Commissioner of Internal Revenue Service  
*Respondent*

**PETITION FOR REHEARING**

Michael Visin  
Petitioner Pro Se  
284 26<sup>th</sup> Avenue  
San Francisco, Ca. 94121  
Tel: (415) 387-3809

**Abbreviations:** /Following will be used in the text of Petition/:

1. Bus. Exp. - will always stand for - **Business Expenses.**
2. BRPs. - will always stand for - **Business Rental Payments.**
3. Pr. - will always stand for - **Petitioner.**
4. R. - will always stand for - **Respondent.**
5. Hmr. - will always stand for - **Homeowner.**
6. Pr.'s - will always stand for - **Petitioner's.**
7. R.'s - will always stand for - **Respondent's.**
8. Hmr.'s - will always stand for - **Homeowner's**
9. Hmrs. - will always stand for - **Homeowners.**
10. Tr. Reg. - will always stand for - **Treasury Regulations.**
11. I.R.C. - will always stand for - **Internal revenue Code.**
12. T.C. - will always stand for - **Tax Court**
13. ONBEs.-will always stand for **Ordinary and Necessary Business Expenses.**

### **Table of Content:**

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2. **Part A.** Constitutional Guarantees and Protections extended to Citizen-Petitioner, and specific Constitutional Directives to The Judiciary relative to this Case \_\_\_\_\_ Page 1 – 3
3. **Part B.** Additional Fundamental Legal Contentions in support of Pr.'s Position \_\_\_\_\_ Page 3 - 7
4. **Part C.** The Due Process under The Law, and whether it was rendered to Pr. and His Case by the Both Lower Courts. Page 7 - 10
5. **Conclusion.** \_\_\_\_\_ Page - 10

### **List of the Legal Authorities:**

1. Internal Revenue Code Section 280A
2. Treasury Regulations 1.280A-1, 2
3. Internal Revenue Code Section 162.
4. Treasury Regulation 1.162-1
5. Legislative Committee of the House  
Opinion on Sec.280A Amendment:  
[ House Report 99-426, pages 133 – 135  
(1985), 1986 – 3 C.B. (Vol. 2) pages 133 – 135.]
6. IRC. Sec.179

7. Constitution of the United States  
**Section 1, of Article I.**
8. Constitution of the United States  
**Section 8, of Article I.**
9. Constitution of the United States  
**Sections 1 and 2, of Article III.**
10. Constitution of the United States  
**Article VI, second paragraph.**
11. Constitution of the United States  
**Amendment V.**
12. Constitution of the United States.  
**Amendment XIV.**

/This Petition was prepared in compliance with Supreme Court of the United States Rules 29, 33, 34 and 44,./

**Special Note:**

All underscored words and expressions, and bold type, - is by Petitioner only, by necessity to emphasize, or to make stand out certain contentions, and parts of the quotations from the Tax Laws, and from Treasury Regulations and similar, which never have been paid particular attention to, - in previous similar cases

## CERTIFICATION

This Petition is Presented in good faith and not for the delay, and is particularly restricted to intervening circumstances of a substantial and controlling effect, and to other substantial grounds not previously presented. These are specifically restricted to six Constitutional Guaranties and Protections extended to individual Citizen, and to this Petitioner, some of which, but not substantial all, were only mentioned in original Petition but not deliberated on, due to limit on pages.

Petitioner also lists all reasons why inherent deficiencies in the actual reduction of the Text of Sec.280A may lead to this Section to be misunderstood and misinterpreted in the practice of its application. Only some were mentioned in Original Petition.

Petitioner also offers in this Petition his thoughts, why Courts inclination toward conformity of decision in similar cases, should not possibly prevent Courts' judicial inquiry in the Laws intimately related to the Case, which have not been considered in their whole in precedent cases, simply because they were not brought to attention of the Courts in full detail.

Petitioner also greatly hopes that this Petition will help Pr. to enter in Legal Dialog with Respondent, which Petitioner was denied for seven and a half years, and that finally fair and independent Judicial Review in his case will happen, if Respondent will respond in good faith to the most important Legal Contentions of Petitioner.

Only rarely in this Petition, Petitioner makes references to his Original Petition to keep the logical chain between two unbroken.

Hereby certified by Petitioners:

Petitioner Pro Se  
Michael Visin \_\_\_\_\_ /Date/ \_\_\_\_\_

Natalie Marselly \_\_\_\_\_ /Date/ \_\_\_\_\_



## **Introduction**

In this Petition Pr. will fully rely on the legal contentions and precise Facts and Evidence presented to Court from such Tax Laws and Legislative Regulations, as Sections **162, 1.162-1, 1.280A-1,2,** and **1985 Legislative Amendment of Sec.280A**, exactly as they are written; Pr. will try in this Ptn. to draw Court's attention to whether these National Laws received due attention and respect in Lower Federal Courts, and whether these Courts acted on these National Laws as Constitution of The United State directs them, and whether these Courts handling of Pr.'s case constituted Due Process under the Law; rendering to Pr. Equal Constitutional Protection under these Laws. To complement original Ptn., Pr. presents additional legal Contentions in regard to fundamental differences between Sec.162 and Sec.280A, which could not be included in original Ptn. due to limitation on the number of pages. And while these are complementary to, (no less than fifty points of proof in support of Pr.'s position), already presented, - they, probably, are the most important, especially in regard to analyzes of how and by what reasons Sec.280A became so misunderstood during the practice of its application.

### **Part A. Constitutional Guarantees and Protections extended to Citizen-Petitioner, and Specific Constitutional Directives to The Judiciary relative to This Case.**

**Section 1, of Article I:** "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." This quote, in Pr.'s opinion, sets the rule that only the Congress is allowed to enact the National Laws, which has to be respected, acted upon, and subjected to, by anyone in This Country, including, especially the Judicial Branch; and thus no one is above the Active Law. (And while it is known that, Supreme Court of The United States sometimes, reflecting changes in Life of the Nation and its Collective Conscious, may alter Congressional Laws; this always comes, as result of some particular case in the Court, and is always being accompanied by comprehensive judicial review, reflected in Court Opinion. (This Pr., however, never pretended or asked Lower Courts or This Court, to change or alter any Laws. The only thing Pr. ever asked for, is to apply national Laws in his Case - exactly how these Laws are written.)

**Section 8, of Article I:** "The Congress shall have Power To lay and collect Taxes, ..... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

This quote, in Pr.'s opinion, establishes that Tax Laws enacted by the Congress, enjoy the same status as any other National Laws, and must always be respected and acted upon by all Branches of the Government, by Its Departments, and by any Officer in them.

**Sections 1 and 2 of Article III:** "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.."

"The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, ....."

These quotes, in Petitioner's opinion, definitely establish Constitutional Responsibility of Judicial Branch, to hold all National Laws in equal respect, and equitably act-upon them in all cases.

**Article VI, second paragraph:** "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Laws of the Land; and the Judges in every State shall be bound thereby, any Thing in Constitution or Laws of any State to the Contrary notwithstanding."

This quote in Pr.'s opinion, while devoting its prevailing attention for establishment of the overruling authority of National Constitutional Laws, over the State's Laws; at the same time, proclaims the National Constitutional Laws the "supreme Laws of the Land", by which all judges in This Country shall be bound by; the rule, equally applicable to Pr.'s Case, with special importance of establishment that, "...the Laws of the United States...shall be made in Pursuance thereof...", but not to be ignored or flatly rejected, as it happened in Pr.'s Case, in both Lower Courts.

**Amendment V:** "No person shall be.....deprived of life, liberty, or property, without due process of the law;..."

This famous quote, in Pr.'s opinion, not only establishes that these possible listed deprivations are too serious, and can not be acted upon by the Government without "due process of the law";

and that Laws enacted by the Congress, should be respected by the Judiciary, in accordance with their supreme Laws of the Land status, established in the Constitution, and can not be ignored in the Due Process, without undermining it.

**Amendment XIV:** "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

While this, equally famous quote, speaks of the States, it is impossible, in Pr's opinion, to imagine that United States Government, by itself, and especially its Executive and Judicial Branches, are left immune to These Rules; and should not, in practice, act as the shining example of These Rules application in the Life of This Country. In addition this quote, in Pr.'s opinion, establishes several important rules of relationship between United States citizens, and such branches of the Government as Executive and Judicial, which, means following:

a). Any Law enacted by the Congress extends equal protection to all United States citizens, which means that, no Law can be disregarded or ignored by the Executive or Judiciary branch of the Government, if citizen, in his or her appeal to the Government, as a whole, places himself, due to legally sound reasons, under this Law protection.

b). No Law shall be applied by the Judiciary in individual case, without Due Process under the Law, which demands comprehensive Judicial Process, for the purpose of examination of this Law applicability to the particular case and verification that this Law does not abridge "the privileges or immunities" unquestionably granted to any Citizen-Pr. by the other National Law.

#### **Part B. Additional Fundamental Legal Contentions in support of Pr.'s Position.**

1. The main Law, under which protection Pr. placed himself and this Case, is Sec.162, - "Trade and Business Expenses", which is undeniably one of the most important Supreme National Laws of the Land, because it regulates Business Taxation and, in fact, is the very mechanism of our dynamic economy. The leading principle of this Law is based on the Rule that Ordinary and Necessary Business Expenses are taxed not on the particular Business's Side,

but on the Side of the Other Parties, which are on Receiving End of these Business Expenses; and this is why these expenses are fully deductible in the end of the Business's year to any Business, even if Business came up with Net Business Loss. Sec.162 and Sec.1.162-1 are very comprehensive Laws, which have their Main Rules, just described, and Cross-References with some other Sections in I.R.C., reflecting some exceptions from the General Rule, but no such exists with Sec.280A, of which Court was equitably informed.

2. Since Sec.162 is based on business taxation principle described over, equally applicable to any legitimate business, and it includes in its Regulations all possible exceptions from the General Rule, no other section was needed to rule over its specificity.

3. Sec.280A originated only, when Congress allowed Hmrs, who use part of their Homes exclusively for business, to deduct proportional to the used for business part, typical Homeowners Payments in the Security and Maintenance of the Equity of their Homes, such as Home Insurance, Home Depreciation, Pest Control, Home Repairs and similar. This, was the only purpose of Sec.280A enactment; which had nothing to do with deduction of the ONBEs., under Sec.162, which remain unchanged; this is why no Cross-Reference between Sections 162 and 280A was included in these Sections, which would adversely affect or put some limitation on deductions regulated by Sec.162.

4. By allowing to Homeowners such deductions, which Congress named Home Office Deductions, Congress placed certain limitations on them, because these expenses do not participate in the Income Creating Activity, and can not be deducted under the same rule as Ordinary and Necessary Business Expenses. (The very need why special Tax Code Section was needed regulating Home Office Deductions.)

5. By allowing, freshly named, Home Office Deductions, Congress established quite a rigid limitations on them, by not only allowing them to be deducted only from the Excess of the Gross Income from the Business conducted on the part of the Home, but also demanding that proportional to Business Space part of Mortgage Interest, Real Estate Taxes, and Casualty Losses, which are allowed to all Homeowners to be deducted unconditionally, to be deducted first from the Excess of the Gross Income from the Business, in advance of Home Office Deductions. And if there is

not enough of the Excess of the Gross Income remained for the full amount of Home Office Deductions to be deducted, the remaining part of them was allowed to be carried on to the next year of the Business under same condition of deductibility.

6. Points 3., 4. and 5. most precisely describe the purpose of Sec.280A original enactment and the principle and order by which Home Office Deductions were allowed by the Congress. In the year 1985, Sec.280A was amended by the Congress; (see on this in Original Petition) and one of the main reason for this Amendment, was that, in **Scott v. Commissioner of IRS, 1985**, Tax Court allowed deduction of Home Office Deductions in full, which increased Mr. Scott's, (Hmr.) Business Net Loss. In this Amendment Congress most sharply ruled that, ONBEs. must be deducted First from the Gross Income of the Business with allowable Business Net Loss, well in advance of attempt of Home Office Deductions to be processed under restriction that these deductions can not create or increase the possible Net Business Loss. The summary of this is that, because ONBEs. are allowed to be deducted to business in full under Sec.162, it means that **Home Office Deductions regulated by Sec.280A, can start only after Deductions regulated by sec.162 ends!** This undeniable and none ignorable Legal Fact of Legislative Amendment, provides **Full Proof Evidence** in support Pr.'s Position that, ONBEs., and Pr.'s BRPs, as undeniably legitimate part of the first, as Sec.162 specifically rules, - do not, by any means, belong under Sec.280A authority. This also proofs that, attempt of the Tax Court to prove that Sec.280A has legal authority over Sec.162 could not be successful; because it is clear from Legislative Amendment of Sec.280A that it is Sec.162 that has undeniable authority within the established by the Congress Order or Processing the Home Office Deduction, **with a must of ONBEs. to be deducted First and in Full!** This undeniably proves that in Pr.'s Case Sec.280A was given authority, which it has not been given by the Congress; and which, according to Supreme Laws of the Land - Sections 162 and 1.162-1, - simply does not exist in I.R.C.

7. It is worth to add few additional points of explanation of how and why the Misconception in the proper understanding of legal Authority of Sec.280A could happen.

a). While deduction of specifically Bus. Exp., regulated by Sections 162 and 1.162-1, for the purpose to determine the Excess



of the Gross Income from the Business, available for the Home Office deductions, - is the First Step in the processing Home Office Deductions, - **this First Step was not included in the Paragraph (c )(5) "Limit on Deduction" of Sec.280A.** This none inclusion of such Important Starting Step of the whole process of specific deductions, for which only, Sec.280A was enacted, creates an immediate brake in the Logical Chain of resulting regulation of Legislative Amendment of Sec.280A; making it, so to say, headless, which also creates the **Starting Point for the Misconception.**

b). This is greatly exacerbated by the splitting the expression of "Excess of the Gross Income from the Business" in two parts, creating the wrong impression that, This Excess in Sec.280A is determined by deductions of Home Mortgage Interest and Similar from the Gross Income; and that this, indeed, is the First Step in the process of Home Office Deductions.

c). And it is because, again, the Deduction of Specifically Bus. Exp., the must - First Step, according to Legislative Amendment, has not being mentioned at all in (c )(5) of 280A, additional wrong impression can be created that, subparagraph (ii) of (c )(5) can be spread on deductions of Ordinary and Necessary Business Expenses also, and that Net Business Loss under Sec.280A is not necessarily deductible, **which, literally, can turn the whole meaning of Legislative Amendment of Sec.280A, and this very Section - upside down!** And this exact misconceptual approach clearly surfaces in Tax Court Opinion, with Tax Court quoting ruling paragraphs of Legislative Amendment of Sec.280A, which stand in exact opposition to the T.C. Opinion.

d). It is possible to presume that, the very creators of the text of Sec.280A, have not included the First Step, the deduction of Specifically Bus. Exp. in (c )(5) of Sec.280A, because this Section, as they possibly thought - is not about deductions of ONBEs. at all; **but this none inclusion happened to be great disservice to the very Cause of Legislative Amendment of Sec.280A.**

Still, if Lower Courts have not paid attention to the possibility that, Sec.280A can be misinterpreted on account of over described deficiencies in formulation of (c )(5), these Courts should have not been turning away, when Pr. pointed to these. First, because these deficiencies are real and are able to distort the exact meaning of 280A's Amendment; and second, because this is what the Due

Process Under the Law is all about – **the Legal Dialog, which brings all relative legal data to the surface.** And in this case, it must have been: Sections 162, 1.162-1, 1.280A-1,2 and Legislative Amendment of Sec.280 itself. But both Lower Courts in this case have chosen to avoid the Due Process, and have not entered in Legal Dialog even with themselves.

e). Also, Subsection (a) of Sec.280A renders to attentive reader definite proof that Sec.280A has no authority over Pr.,' BRPs; for convenience we quote it again:

“except as otherwise provided in this section, in case of a taxpayer who is an individual or an S corporation, no deductions otherwise allowable under this chapter shall be allowed with respect of the use of the dwelling unit which is used by the taxpayer during the taxable year as a residence”.

**Question No. 1:** Do Pr.'s BRPs. belong to “**deduction otherwise allowable under this chapter?**” **Certainly not**, because they are not specified neither in Sec.280A, nor in Sec.1.280A-1,2 and not even mentioned there in any shape or form. But they are specified as deductible BRPs in Sec.162, and there are no Cross-References in 280A and 162 to otherwise, or anywhere in I.R.C., authorizing the breach between fundamental differences in taxation approach between Home Office Deductions and ONBEs.,

**Question No.2:** And what about others ONBEs, are they also belong to deductions allowable under the 280A? **The answer is No**, because they, again, are specified as deductible expenses in the same Sec.162. and have nothing to do with ruling of Sec.280A, except **all of them must be deducted first** from the Gross Income of Business, as Congress Explicitly rules in 1985 Legislative Amendment of Sec.280A. And in respect of the **usage** of the part of the dwelling unit for business and the other part for living, - **it is the fact of such usage, why strictly Personal Expenses, let call them what they are:** as Payments in Security and Maintenance of the Equity of the Owned Home were allowed to be deducted at all!

**Part C. The Due Process under the Law, and whether it was rendered to Pr. and His Case by the Both Lower Courts.**

**1. In Tax Court:** All the Tax Laws and Regulations on which Pr. based his Legal Arguments, exactly how these Laws and Regulations were enacted by the Congress and by Secretary of The Treasury with explicit authorization of the Congress, which made these Regulations The Legal Extensions of the National Laws, -

were exactly The Laws, which Tax Court was endeavored by Constitution and Congress to uphold. So, how Tax Court treated these Laws? It treated them in complete disregard, by rejecting all Pr.'s Legal Contentions based on them, and prevented any possibility for Pr. to enter in Legal Dialog with R. and Court itself, by disallowing the Open Court Hearing that Pr. so desperately tried to obtain. Farther, Court also rejected and refused to conduct the Judicial review of completely New Pr.'s Legal Arguments advanced by Pr. in direct Pr.'s Response to Court's Opinion. T.C. allowed to Pr. only the role of passive observer of what Court will say or do; but the role of Pr., as Pro Se Advocate in Pr.'s Case, - was totally denied to Pr. by the Tax Court.

Can be such Judicial Process characterized, as the Due Process Under The Law, as Constitution defines it, especially, in VI, and XIV Amendment? Did Tax Court demonstrate Due Respect to the Supreme Laws of the Land, such as Sections 162 and 1.162-1, and act with concern in regard to Equal Constitutional Protection that these Laws extend to Pr. under them? Tax Court disregarded Sec.162, completely ignored Sec.1.162-1 and Sec.1.280A-1,2; and misrepresented Last, 1985 Legislative Amendment of sec.280A. In fact, T.C. did, just about, anything that could be done wrong in this Case, and it did it with authority, clearly demonstrated in T.C.'s Order of denial of Pr.'s Motion For Reconsideration.

In this list of fundamental errors, we have not listed Misrepresentation by the Tax Court of the Legal Authority of Sec.280A, but on this account it relied on the precedents, which were ruled always for R., under the same misconceptual interpretation of legal authority of Sec.280A; and we don't think that such precedents can be judged helpful to the Tax Court under Stare Decisis Principle; because if these precedents were disallowing deduction of the Business Net Loss, happened on account of properly substantiated ONBEs., the decisions in such precedents were fundamentally unconstitutional, because they definitely ignored major Ruling and Principle on which Sec.162, the Supreme Law of the Land is based in regard to Business Taxation. And as we already pointed in Conclusion of Original Ptn., if Tax Court would not completely ignored Sec.1.162-1, which text and Cross-References immediately take all the air from the T.C. attempt to prove that Sec.280A, which has no Legal Basis

to rule over any specifically Bus. Exp., has Legal Authority over Sec.162, - **T.C. would not be able to arrive to his chosen decision; and this case wouldn't be appealed to any other Courts.** (We would not say, in this context that, Sec.280A is not a Supreme Law of the Land. It is, but on completely different taxation subject matter.)

**2. In Court of Appeals for The Ninth Circuit:** If Tax Court evidentiary admitted that Pr.'s BRPs. are specified as legitimate part of ONBEs., and consequently allowed to be deducted under Sec.162, - unwillingly handing to Pr. the undeniably winning point in the Case; Court of Appeals did not consider this at all. It simply affirmed Tax Court decision, but not on the point of prevailing authority of Sec.280A over Sec.162, but on the Sec.280A alone and on one misconceptionally decided precedent, by such approach completely disregarding and ignoring Sections 162., 1.162-1, 1.280A and 1985 Legislative Amendment of Sec.280A. And despite that the same Legal Arguments, that have been presented to this Court were presented to Court of Appeals in full detail, Court of Appeals characterized them as "meritless"; and the whole Appeal not deserving an Open Hearing. Court of Appeals, which should be more sensitive to Constitutional Matters, than even Tax Court, violated all the Promises, Guarantees, and Protections under the Laws, granted to a Citizen-Petitioner, and reneged on the All Obligations toward the citizenry, which Constitution laid on with trust on the Independent Judiciary. Was this the Due Process under the Law? Again no, because Both Courts heavily relied on the principle of preserving conformity of decisions in similar cases, but not paid due attention that, such attitude can harbor possibility of rejecting perfectly sound and strong case that may contain new, never before raised arguments, with strong potential to overrule the precedent, based on the Sound National Laws, never considered before in their whole in similar cases. But is not this, what Independent Justice Principle demands from Judiciary, within the Due Process; for the Judges to be independent, even from themselves, in every New Case, and to evaluate all Laws in "Equity"? And to not allow the Independent Justice Principle to sleep through the fingers?

**3.** Bellow is the list of particular Constitutional Provision that, in Pr.'s understanding were violated by the Tax Court and Court Of Appeals, in their approach and handling of Pr.'s Case:



a). The most important principle of the Due Process is that, Burden Of Proof rests on Pr., was killed from the start by the Tax Court, despite that Pr. presented sound Legal Arguments based on important National Laws intimately related to Pr.'s Case. And Court of Appeals basically did the same.

b). Tax Court refused to enter in Legal Dialog with Pr., completely shielded R. from such Legal Dialog with Pr., rejected everyone Legal Argument and precise Legal Evidence and Legal Facts from the Tax Laws, on which Pr. based his appeal; deprived Pr. from the role of Pro Se Advocate in His Case, and decided everything on its own.

c). Court of Appeals for the Ninth Circuit did not bothered with Pr.'s Case at all, and neither it acted in the slightest as Independent Justice. It also reneged on all Constitutional Guarantees and Protections granted to the citizenry in the Due Process Under the Law, which Constitution entrusts the Judiciary to fulfill; ignored all the Supreme Laws of the Land, on which Pr. based his Legal Arguments, and under which Protection Pr. placed himself; deprived Pr. from the full and objective Judicial Process; by refusing to enter in Open Legal Dialog with Pr., and affirmed the Tax Court Decision in the shortest possible.

4. An interesting fact in this case: While Pr.'s BRPs. were already taxed under regulation of Rental Income and Expenses of Pr.'s Landlord, and Landlord's Home Office Deductions were supposedly processed under the Sec.280A, because Landlord resides in the owned, four apartments building, of which three apartments are rented to lodgers; R. is still aggressively trying to tax Pr.'s BRPs second time; with three Levies imposed and consequently relieved, and with total grown to \$1000 more from originally defined by R. deficiency.

### **Conclusion.**

While this Pr. understands discretionary Court's rules, he presumes that in reliance on them Courts have to be always on alert in regard to Constitutional Principles laid down for Judiciary, such as: Due Process under the Law, Equal Protection under the Law, and such Constitutional Directive as: "The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution...." and considering the Fact that both Pr.'s Petitions qualitatively raise the question of Fundamental Misinterpretation of two important National Laws: the Writ of Certiorari in This Case must be granted.